TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1894.

No. 189.

Batte P. Whitaker, Esq'r &c

PHILIP WERLEIN, PLAINTIFF IN ERROR,

vs.

THE CITY OF NEW ORLEANS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED JANUARY 17, 1895.

(17,263.)

(17,263.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 678.

PHILIP WERLEIN, PLAINTIFF IN ERROR,

vs.

THE CITY OF NEW ORLEANS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

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a UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

CITY OF NEW ORLEANS, Defendant in Error,
versus
PHILIP WERLEIN, Plaintiff in Error. } No. 12560.

R. A. Tichenor and Samuel L. Gilmore for defendant in error.
E. T. Merrick and Albert Voorhies for plaintiff in error.

Writ of error to the supreme court of the State of Louisiana from the Supreme Court of the United States of America, returnable at the city of Washington, D. C., within thirty (30) days from the twelfth (12th) day of December, A. D. 1898.

Transcript of Record.

1 STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans.

Civil District Court for the Parish of Orleans.

Appeal from the honorable the civil district court for the parish of Orleans.

Petition for Possession of Property.

Filed March 14, 1895.

CITY OF NEW ORLEANS
vs.
PHILIP WERLEIN. } No. 45347. Division C. Hon. F. A. Monroe, Judge.

Hon. the judges of the civil district court, parish of Orleans:

The petition of the City of New Orleans, a corporation duly chartered under act No. 20 of 1882, of the acts of the General Assembly of the State of Louisiana and the laws amendatory thereof, with respect represents:

That Philip Werlein, a citizen and resident of the city and parish, is in possession of and unjustly claiming title to a certain lot of ground, together with the improvements thereof, valued about $15,000 and described as follows, to wit:

2 A certain portion of ground, together with the improvements thereon, situated in the first district of this city, in the square bounded by Poydras, Perdido, Carroll, and Baronne streets, and measuring 150 feet 6 inches front on Baronne street, 57 feet five inches front on Perdido street, 150 feet 4⅜ inches on Carroll street, and 57 feet 5 inches and 1 line on the line nearest Poydras street.

Petitioner further avers that said Philip Werlein is not and never was the owner of said property, and that his only alleged title to said property is derived through *mean* conveyances from a sale made by the United States marshal to one Andrew C. Lewis, by deed executed September 25th, 1878, said sale having been made under and by virtue of a writ of *fieri facias* issued in the suit of John Klein *vs.* The City of New Orleans, No. 7801 on the docket of the United States circuit court.

Your petitioner further avers that said sale by the United States marshal to Andrew C. Lewis was and is absolutely null and void, and that no title or right whatever in or to said property passed by said sale to said Andrew C. Lewis or to the defendant herein, who claims through *mean* conveyances from said Andrew C. Lewis.

That said property is property which was dedicated to public use long prior to the date of said marshal's sale by Bertrand and John Gravier, and forms part of the Place Gravier, in the Faubourg St. Mary, in this city, and that said property was at the date of said marshal's sale and has ever since been absolutely unsusceptible of alienation, of private ownership, or of private possession, and that said Werlein's possession is illegal and in bad faith.

Petitioner further avers that she is invested by law with the administration and possession for the public benefit of all property in this city dedicated to public use, and has the right to sue for
3 the recovery of the possession of and to establish the title and right of use of the public to any such property.

Wherefore petitioner prays that Philip Werlein be cited to appear and answer this petition, and that, after due proceedings had, there be judgment in favor of plaintiff, The City of New Orleans, and against defendant, Philip Werlein, decreeing said property to be the property dedicated to public use, recognizing plaintiff's right to the possession and administration of the same, and ordering the defendant to deliver to plaintiff possession of said property free from all incumbrances, and for costs,

And for general relief.

(Signed) R. A. TICHENOR,
(") GILMORE & BALDWIN,
(") E. A. O'SULLIVAN, *City Att'y,*
Att'ys.

Motion of Defendant for Time to Answer & Order Granting Same.

Filed March 25, 1895, and entered on the minutes of same date.

Civil District Court, Division C.

CITY OF NEW ORLEANS
vs.
PHILIP WERLEIN. } No. 45347.

On motion of Merrick & Merrick, of counsel for defendant, and on suggesting to the court that this suit involves the title to a large and valuable piece of real estate in the city of New Orleans, and

that longer time is necessary to this defendant in which to prepare his defence—

4 It is ordered by the court that ten days' longer time be allowed to the defendant in which to prepare his defence in this case.

Answer and Peremptory Exception of Defendant.

Filed April 4th, 1895.

Civil District Court, Division C.

THE CITY OF NEW ORLEANS
vs.
PHILIP WERLEIN. } No. 45347.

The defendant, Philip Werlein, comes and, by way of peremptory exception founded in law, says that the plaintiff cannot maintain its present action, for this, viz:

That the right of said John Klein to seize and sell the said portion of land described in plaintiff's petition under his, said John Klein's, execution issued on his said judgment against the City of New Orleans in the circuit court of the United States, cause No. 7801, in order to satisfy said judgment as far as the proceeds of sale would go, was put at issue and contested by the said City of New Orleans against said John Klein by a bill in chancery in said U. S. circuit court, wherein a preliminary injunction was obtained by the said city, the complainant, against said John Klein, the defendant, and the said Klein having answered said bill of complaint, such proceedings were had in said chancery suit that the same came on to be heard on the whole case, and on the 19th day of June, 1878, a final decree and judgment was rendered by the said circuit court, the same having jurisdiction, against said city and in favor of said John Klein, whereby said injunction against said John Klein, restraining him from selling said property under his said exe-

5 cution as the property of said city, was dissolved, and said complainant's bill was dismissed, and the right of said John Klein to proceed and sell said tract of land described in said petition under his said execution was recognized, affirmed, and established, and became and is the thing adjudged (no appeal having been taken therefrom) against said plaintiff; all of which will the more fully appear by a certified copy of said suit in chancery and the decree thereon, being cause No. 8461 of said circuit court of the United States for the eastern district of Louisiana, hereto annexed and made a part hereof, marked I.

And it being alleged by plaintiff and admitted that this defendant holds by *mean* conveyances from said Andrew C. Lewis, this defendant pleads said decree in said chancery suit in said circuit court of the United States as *res judicata* and in bar of this suit, and as a jurisdiction and authority and warrant to the said marshal of the United States under the said writ of execution issued by said circuit court

of the United States in said cause No. 7801, of said John Klein against the City of New Orleans, to proceed and offer at public sale the said property according to law, and to adjudicate the said property to said Andrew C. Lewis, the last and highest bidder, as he did on the 25th day of September, 1878, and said decree of the court of the United States and proceedings of the marshal of the United States thereunder give full validity and force under the laws of the United States to said marshal's sale, and to all subsequent purchasers holding title and conveyances thereunder down to and including this exceptor, Philip Werlein.

And in the event the foregoing peremptory exception of *res judicata* as a plea in bar to this action is overruled, and not otherwise, this defendant, further answering, says that he denies gener-
6 ally and specially each and every allegation contained in plaintiff's petition except what is hereinafter specially and in the form herein stated and admitted.

This defendant admits that he is in possession of the piece of land described in plaintiff's petition, having with P. P. Werlein, his father, bought the same in good faith, with the buildings thereon, from Bertrand Adoue and others by act translative of property, passed before N. B. Trist, notary public, on the 4th day of August, 1881, for and in consideration of twenty-one thousand three hundred and fifty dollars ($21,350), which has been long since paid to said vendors, as will appear by document G, made part hereof, and said P. P. Werlein, the said father of this defendant, having died, that on the 7th day of August, 1886, this defendant bought the interest of his coheirs to said property by an act passed before the same notary, N. B. Trist, on the 7th day of August, 1886, as will appear by reference to document H, made a part hereof.

This defendant, further answering, says that the piece of ground claimed by plaintiff in this suit has always been used for private and not public purposes, and being low ground was called the goose pond as well as Gravier basin, and on the 18th day of July, 1833, the City of New Orleans, by its proper authority, previously conferred by resolution, in consideration of the filling up of the old abandoned Gravier basin, thus making that part of the city habitable, and of the transfer of certain land owned by the Carrollton & New Orleans railroad for Baronne street, &c., all of which considerations and advantages are more fully and at large set out in the contract, by a public act passed before Felix De Armas, notary public, among other things abandoned this tract of land in contro-
versy in this suit and another on the other side of Baronne
7 street to the said railroad company for its enjoyment, use, and possession during the duration of the charter of said railroad company, which did not expire until 1883, and said railroad company used said land now in controversy, among other things and purposes, for a sort of terminus to a horse railroad, where the horse cars were stopped and horses kept until the return of train.

A copy of said contract is hereunto annexed and made a part hereof, marked A.

Defendant, further answering, says that on the 25th day of June, 1864, said railroad rented the said property in dispute or a part thereof to one Magdalen Clauson to the first day of May, 1867, at the rate of one hundred and fifty dollars ($150) per month, as will appear by document annexed, marked B.

This defendant further represents that on the 24th day of February, 1868, there being about eighteen (18) years of the railroad lease still to run, the lease for the balance of the term was sold, after an adjudication, at public auction to Christian Schneider, Louis Schneider, and Herman Zuberbier for fifteen thousand two hundred dollars ($15,200); all of which will more fully appear by document C, made in pursuance of said adjudication by said corporation and made part hereof.

Defendant further represents that on the 18th day of May, 1867, the City of New Orleans having by proper authority recognized the sale of said lease to said Christian Schneider, Louis Schneider, and Herman Zuberbier for private purposes, as aforesaid, — entered into a valid contract with the City of New Orleans in due form, whereby the city contracted with the said parties, lessees on their part, to erect on said described piece of ground a solid, handsome four-
8 story brick building, the wood-work to be of seasoned wood of the best quality, the basement to consist of six or eight stores, and the upper portion to be a theatre; that said building was completed by said C. & L. Schneider and Herman Zuberbier according to said agreement and approved by the city authorities, and it was further agreed that at the termination of said railroad lease, say 9th day of February, 1883, the city was by said contract to take the buildings erected by said lessees, C. & L. Schneider and H. Zuberbier, at a price to be agreed upon, and, in the event of disagreement, to be fixed by appraisers and umpire, as stated in said contract, all of which will more fully appear by a copy of said contract, marked B and made a part hereof.

This defendant further represents that after the completion of said large building and stores on the said ground in dispute by said C. & L. Schneider and H. Zuberbier and those holding under them for many years, the City of New Orleans having become embarrassed with debts, allowed said John Klein to recover a judgment for a large amount against itself in said cause No. 7801, in the U. S. circuit court, and the said property in dispute having been seized under execution as the property of the said city of New Orleans, was sold after said final decree, as aforesaid, settling the right of said Klein to sell said described property in controversy under said execution as the property of said city, which had always been used for private purposes and as private property and never as a public place, and the city has endeavored to get a revenue from it until it was sold under said execution. A copy of said record 7801, duly certified, and execution thereon, is annexed for greater certainty and marked K.

Defendant further represents that said Andrew C. Lewis, the purchaser at said marshal's sale, by act passed before Michel Gernon,

sold said piece of ground or tract of land to Edward R. Hogan,
9 as will more fully appear by reference to the duly certified copy of said act of sale, hereunto annexed and made a part hereof and marked E, and said Edward R. Hogan sold and delivered said described property, by act passed 8th day of February, 1879, to Bertrand Adoue, before Andrew Hero, Jr., notary public, as will more fully appear by reference to a duly certified copy of said sale, marked F, annexed and made part hereof.

This defendant further represents that by the said several conveyances in his chain of title he has been subrogated to all actions in warranty against said city.

This defendant further represents that said plaintiff, since the said purchase by said Lewis of said property, the said city, has caused said property to be assessed against the possessors and collected the taxes thereon as the property of said parties, and this defendant, since the 4th day of August, 1881, has paid the city taxes amounting to, say, thirteen thousand two hundred & forty-two $\frac{10}{100}$ dollars.

This defendant, further answering, says that the said plaintiff is barred and estopped, not only by said decree of said United States circuit court, but by its continuous course of conduct treating said property as susceptible of private use and ownership, and also by seeking to recover said property without offering to return the sums of money enused to its benefit.

Defendant further represents that said plaintiff is bound to warrant and defend his possession of said property.

Wherefore this defendant prays that the said decree of said circuit court of the United States be recognized and decreed to be a bar to any recovery on the part of the plaintiff, and that there be judgment against the plaintiff and in favor of defendant, and
10 that this defendant have a judgment in reconvention against the plaintiff quieting him in his title and possession of said property and general relief.

(Signed) By MERRICK & MERRICK,
Att'ys for Defendant.

Exception Overruled.

Extract from the Minutes of Division C.

MONDAY, *April* 29, 1895.

Present: Hon. F. A. Monroe, judge.

Civil District Court, Division C.

CITY OF NEW ORLEANS
vs. } No. 45347.
PHILIP WERLEIN

The exception in this case came up for hearing on this day—present, Messieurs B. A. Tichenor & Sam'l L. Gilmore, for plaintiff; Messieurs Merrick & Merrick, for defendant—and after hearing pleadings, evidence, and counsel, the court considering the law and

the evidence to be with plaintiff, it is ordered that the defendant's exception be overruled at his cost.

Bill of Exception.

Filed May 15th, 1895.

Civil District Court, Division C.

CITY OF NEW ORLEANS
vs.
PHILIP WERLEIN. } No. 45347.

Be it remembered that on the 28th day of April, 1895, it being the day assigned for the trial of the exception and plea in this case in bar of the plaintiff's action to recover of the defendant
11 the portion of ground in his possession as owner, stated in plaintiff's petition as sold by the United States marshal to one Andrew C. Lewis under and by virtue of a writ of *fieri facias* issued on the 15th day of May, 1878, in the suit of John Klein *vs.* The City of New Orleans, in the circuit court of the United States for the eastern district of Louisiana (here Orleans parish), on a judgment rendered in said circuit court of the United States against the said City of New Orleans, it being cause No. 7801 of said circuit court, and said judgment having been rendered against said City of New Orleans in said cause May 2nd and signed May 6th, 1876, and the said property described in plaintiff's petition in defendant's possession as owner and now sued for was described by the said marshal in his said seizure of the said property under his said writ of execution against the said City of New Orleans on the 16th day of March, 1878, as the lot of ground bounded by Baronne, Perdido, Carroll, and Poydras, measuring one hundred and fifty feet and six inches on Baronne St., fifty-seven feet and five inches on Perdido St., one hundred and fifty feet and four and three-eight-s inches on Carroll St., and fifty-seven feet and five inches on the line nearest to Poydras St., which said lot of ground was further described by the said marshal in his said seizure as being subject to the usufruct of the New Orleans and Carrollton Railroad Company until the 9th day of February, 1883, and being the same real estate described by plaintiff as sold at marshal's sale on said execution on the 21st day of August, 1878, and bought at said marshal's sale by said Andrew C. Lewis, the vendee and purchaser, through the agency of J. W. Thomas;

And it having been admitted by the plaintiff's counsel in open court, as well as in the petition, that the defendant held a regular chain of title from and through said Andrew C. Lewis, the said purchaser of the said land at said U. S. marshal's sale, down to
12 and including the defendant, which said admission is especially made to disencumber the record of the prolix acts of sale making said chain of title;

And to maintain the issue on the part of the defendant under his

said plea, he produced on the said trial of said plea and exception the exemplification of the said suit in chancery No. 8461, brought by the City of New Orleans in the said circuit court of the United States, eastern district of Louisiana, against said John Klein to restrain and enjoin him, the said John Klein, from selling under his said execution issued under his said judgment rendered by said court of the United States in suit No. 7801 of the docket of said court to satisfy the same by the sale of same described property, and the said defendant offered to read and give in evidence to the court to support his said plea the said exemplification of said suit in chancery, viz., the certified transcript of the bill in chancery, affidavit, order of the judge, subpœna, injunction, answer, and all other proceedings, the submission of the cause to the judge and decree of dismissal of the bill by an unqualified decree, said transcript or exemplification of said chancery being marked I and made a part of this bill by the identification of the judge.

And the defendant's counsel contended to the court that the said decree in chancery in said chancery suit of the said City of New Orleans contesting the right of said John Klein to sell said described property seized on said execution against said City of New Orleans, being an absolute and unqualified decree of dismissal of said bill, was a bar to this suit and had the force or *res judicata* against said supposed ground of action now set up in plaintiff's petition and against plaintiff on all other grounds of injunction then ex-
13 isting which might have been set up and urged by said city in her said bill of complaint for said injunction against said Klein to prevent said marshal's sale under said execution.

And thereupon the counsel for plaintiff objected to the introduction and admission in evidence of the transcript of said suit in chancery, said complaint against said John Klein, and the decree of dismissal therein, on the following grounds:

1st. That the cause of action involved in said suit in chancery is not identical with the cause of action involved in this suit, as required for the plea by article 2286 of the Civil Code; that the sole and only issues decided in said chancery suit were whether John Klein, having recorded his judgment against the City of New Orleans in the office of the comptroller, pursuant to a statute of this State, and having elected that method of collecting his judgment, had not waived his right to pursue any other method of collection; whether John Klein was the owner of said judgment, and, if so, whether he was estopped by having registered in the office of the comptroller a transfer of the same, and whether the judgment was not subject to certain credits, whereas the issue involved in this case is whether or not the property upon which it is alleged he levied execution is property subject to seizure and sale.

2nd. That the thing demanded in said bill in chancery is not the same thing demanded in this suit, the prayer of said bill in chancery being for an order of injunction restraining said John Klein from selling the property herein in dispute, whereas the thing demanded in this case is a decree declaring the sale affected by said John Klein & Co. absolutely null and void.

And the court, being of the opinion that said cause of action in this case is not the same cause of action set up in said chancery case and not covered or barred by the force of said decree in
14 chancery, refused to allow said transcript of said chancery suit, being Exhibit I, to be offered or received in evidence on said issue on said plea and exception of *res judicata*.

And thereupon then and there the defendant, by counsel, excepted to said opinion and ruling of the court excluding said evidence and reserved his bill of exception thereto.

And this defendant, claiming rights to his said described property in his possession under and by virtue of said judgment, execution, and marshal's sale and decree in chancery, as aforesaid, offered to read and give in evidence, to maintain his said issue on his said plea, the document marked K, being an exemplification of said suit of said John Klein *vs.* The City of New Orleans, No. 7801 of said circuit court of the United States, and the judgment therein, and also the said execution and the said marshal's return thereon and the adjudication of said described property to said Andrew C. Lewis.

And thereupon the plaintiff made the same objection as to the admissibility of said transcript K as to said transcript I, and urged also that said testimony was irrelevant; and the court, being of the opinion that said objections were well taken as to said transcript of said suit No. 7801, judgment, execution, and return therein, refused to allow said transcript of said suit No. 7801, marked K, to be received and read in evidence; to which ruling and opinion defendant then and there excepted and reserved his bill of exception.

The defendant also offered to read and give in evidence, in support of his plea, on said trial the act of sale of Andrew C. Lewis of the property in controversy, bought by him at said marshal's sale, to Edward R. Hogan, November 30th, 1878, by act of sale passed before Michael Gernon, notary public, being document on file marked E; also the act of sale of the same property by said
15 Edward R. Hogan to Bertrand Adoue, passed before A. Hero, Jr., notary public, February 8th, 1879, marked F; also the sale of the same property sold by said Bertrand Adoue and others to said Philip Werlein and P. P. Werlein, his father, since deceased, said act of sale having been passed August 4th, 1881, before N. B. Trist, notary public, marked G, and the act of sale of said defendant's coheirs of their interest in said property to said defendant, P. Werlein, marked H; all and each of which said documents offered by defendant to be read in evidence on the trial of the issue on said plea were objected to by the said plaintiff's counsel on the same ground as the preceeding documents; and the court, being of the same opinion, excluded all of said testimony of the defendant on said issue, and the defendant then and there excepted to said opinion and rulings of the court excluding said testimony and reserved his bill of exceptions.

And the said documents I and K offered to be read in evidence by the defendant and excluded by the court and the said docu-

ments forming said defendant's said chain of title are identified with this bill of exception by the signature of the court.

And time having been given in which to prepare this bill of exception for signature and allowance, which is now done, presented, allowed, and signed this 13th day of ——, —.

(Signed) F. A. MONROE, *Judge.*

Bill of Exception.

Filed May 15, 1895.

Civil District Court, Division C.

THE CITY OF NEW ORLEANS
vs.
PHILIP WERLEIN. } No. 45347.

16 Be it remembered that on the trial of defendant's exception and plea of *res judicata*, claiming rights under said decree of the said circuit court of the United States, in chancery; judgment in said suit at law No. 7801, in the same court; execution and United States marshal's sale to said Andrew C. Lewis, set up in said plea and under said marshal's sale under the execution issued by the United States circuit court, the court having ruled out the testimony offered by the defendant, as stated in another bill of exceptions in this case, and no evidence having been offered by the plaintiff, overruled the said exception and disallowed said defendant's plea and exception, as stated on the minutes of the court, and the said defendant then and there excepted, and time having been given to prepare the bill of exception-, the same is now done and presented, allowed, and signed.

(Signed) F. A. MONROE, *Judge.*

Supplemental and Amended Petition.

Filed June 27, 1895.

Civil District Court, Division C.

CITY OF NEW ORLEANS
vs.
PHILIP WERLEIN. } No. 45347.

To the honorable the civil district court, parish of Orleans:

The supplemental and amended petition of the City of New Orleans with respect represents:

That it reiterates and reavers all the allegations in its original petition contained, and further alleges that the dedication to public use of the property described in plaintiff's original petition
17 has been conclusively established by the judgment of the supreme court of the State of Louisiana in the suit entitled

"The New Orleans & Carrollton Railroad Company *vs.* Municipality No. 2," being No. — of said court (said judgment, together with the opinion of the court, being fully reported in the 19th volume of the Louisiana Reports, folio 63), and that said judgment constitutes *res adjudicata* as against defendant herein.

Wherefore petitioner prays leave to file this its supplemental and amended petition; that defendant, Philip Werlein, be duly cited to appear and answer hereto; that, after all due proceedings had, there be judgment in favor of plaintiff, The City of New Orleans, and against defendant, Philip Werlein, maintaining its plea of *res adjudicata*, and for judgment as prayed for in plaintiff's original petition, and for general relief.

(Signed) GILMORE & BALDWIN,
" R. A. TICHENOR, *Att'ys.*

Order on Supplemental and Amended Petition.

Let this supplemental and amended petition be filed according to law.

New Orleans, June 27th, 1895.

(Signed) F. A. MONROE, *Judge.*

Exception and Answer to Amended Petition.

Filed July 15, 1895.

18 Civil District Court, Division C.

CITY OF NEW ORLEANS
vs.
PHILIP WERLEIN. } No. 45347.

The defendant now comes and for exception says:

1.

By the way of exception, that the said supposed amendment cannot be allowed and ought to be stricken out, because it changes the issue in this case.

2.

Because the said supposed judgment and opinion is *res inter alios acta* and does not possess any of the elements of the thing adjudged.

And if the said objection should be overruled, and not otherwise, defendant denies generally and specially each and every allegation therein contained, and prays for judgment against the plaintiff, and that defendant be quieted in his title and possession of said property and for costs, as prayed for in his answer & reconventional demand.

(Signed) MERRICK & MERRICK, *Att'ys.*

Judgment: Exception Maintained, Supplemental Petition Dismissed.

Civil District Court, Division C.

CITY OF NEW ORLEANS
vs.
PHILIP WERLEIN. } No. 45347.

The exception to plaintiff's supplemental and amended
19 petition came up for hearing on this day—present, Messrs. S. L. Gilmore & R. A. Tichenor, for plaintiff; Messrs. Merrick & Merrick, for defendant—and after hearing pleadings and argument of counsel, the court considering the law to be with defendant and for the reasons orally assigned,

It is ordered and decreed that defendant's exception be maintained and the supplemental and amended petition filed by plaintiff is dismissed at its cost.

Judgment rendered December 2nd, 1895.

Judgment signed December 6th, 1895.

(Signed) F. A. MONROE, *Judge.*

Civil District Court, Division "C."

CITY OF NEW ORLEANS
vs.
PHILIP WERLWIN. } No. 45347.

Testimony and notes of evidence taken in open court on behalf of defendant in the above entitled and numbered cause before the Hon. Frank A. Monroe, presiding judge, this 17th day December, 1896.

Appearances: Samuel Gilmore, Esq., city attorney, for plaintiff; Messrs. Merrick & Merrick, for defendant.

T. O. STARK, being duly sworn, says:

Direct examination by Mr. MERRICK:

Q. Mr. Stark, are you acquainted with the vicinity of the
20 Poydras market?

A. Yes, sir; I am.

Q. How long have you been acquainted with that section of the city?

A. Well, I went to school here about sixty-six years ago. The boys used to go up in the neighborhood of it and hunt snipe and ducks thereabouts. That is my recollection. It is very different now in appearances from what it was then.

Q. When you first knew that section of the city what was the condition of the soil—the land—in reference to improvements and the ponds or canals or whatever else was there—how does it compare now to what it was at that time? And, in order that you may speak

advisedly, here is a map that the counsel on the other side has just offered in evidence; here is what purports to be a basin.

(Witness shown plan of July 18th, 1833, by Zimple.)

By the COURT:

Q. What do you say about that place which is indicated there as "Gravier basin"?

A. I say that is the site of the place formerly known as the "Goose pond." That is what it was called in the old days—the "Goose pond." That is the location of it. It extended from here to right about where Carroll street is. That is my recollection. Sixty-six years is a long time to remember distinctly. I had no particular acquaintance with it. Some of my schoolmates and myself used to go hunting up there.

Q. We are not trying to find out what you do not remember, but we are trying to find out what you do remember.

A. Exactly. That "Gravier basin" is directly the locality,
21 as I remember it, of what we called the "Goose pond." There was a depression there. Freret's cotton press was in that neighborhood, and the ground there was a good deal lower relatively than it is now, because the new canals, the ditches, and canals that went into it—it served as a reservoir. It has been very much reclaimed since then.

By Mr. MERRICK:

Q. Now, Mr. Stark, does Baronne street run over any part of this old basin? Here is the map.

A. Yes, sir; a projection of Baronne street is here and runs over the middle of the pond.

Q. Runs about the middle of the pond. Now, whereabouts was that cotton press?

A. It was, I think, on the upper side of Poydras street from Rampart. It was on the upper side.

Q. Do you remember when the Carrollton railroad was brought in there?

A. No, sir; I do not. I have travelled on the Carrollton railroad in 1837 or 1836; I don't remember it previous to that.

Q. Just look at this map marked "Def't A;" does that map show the situation of the railroad there, to your recollection?

(Document handed witness.)

A. No, sir; I don't remember any railroad there.

Q. Do you remember anything about a railroad station there?

A. No, sir; I have no recollection of it. My recollection of it is, as I have just said, Baronne street here ran through—a prolongation of Baronne street here ran through this "Goose pond;" this implies Baronne street had a railroad through it.

Q. This is subsequent?

22 A. It must have been subsequent; I don't remember it.

Q. This was made after a contract with the Carrollton railroad to run a railroad through there?

A. I have no recollection since 1831; I think about 1831 or 1832; in that neighborhood.

Q. This map—this is a later map?

A. You want me to say—I thought you were asking me whether the Carrollton depot was there when I remembered it.

Q. I mean at any time within your recollection, if it was in the fifties. I remember it in the fifties.

A. I remember travelling on the Carrollton railroad which went up to Greenville in 1836 or 1837.

Q. I am asking you in regard to a later period after the railroad was built.

A. It was never called to my notice; I don't remember whether it was there.

Q. Do you remember whether there was a depot at the termination of that railroad, where you got into the horse cars to go to Carrollton—rather, to go to Tivoli circle—and you then took the steam train there?

A. I don't remember whether that depot was at Canal street or whether it was at Poydras street or where it was. I remember travelling on it; that is my recollection of it.

Q. Do you remember whether there was a cotton press on the opposite side of the street?

A. Are you speaking now of that time?

Q. Of any time since or before.

A. Since when?

Q. In your recollections.

23 A. The press was there when I first noticed that country; since then I went away from here. I quit school in 1831, and I have had no occasion particularly to remember the locality since then.

Q. Do you remember whether that cotton press was opposite the depot, where the horses stopped by the railroad at Perdido street?

A. There was no depot there when I remember it first. I have told you my first recollections of it and the circumstances which caused me to remember it particularly.

Q. Do you remember anything in regard to the buildings on each side of Baronne street, this side of Poydras—downtown from Poydras?

A. I think there were very few to be remembered. There were some scattered shanties, so far as I remember.

Q. Was there any place of public resort there on either side at that time?

A. I don't remember.

Q. Like Lafayette square or any other of these public places in the city?

A. In that neighborhood?

Q. Yes; on which side of the street was it?

A. That I don't remember. I never went to any place of public amusement there that I remember.

Q. I speak of a place like this one out here in front, a public square, where people went to enjoy themselves, or was it built up

and used for private purposes—that is, for the purposes of ordinary business?

A. Not as I remember. It was not built up; of course not.
24 It was a "goose pond," the way I remember it.

No cross-examination.

E. K. CONVERSE, Esq., first being duly sworn, says:

Direct examination.

By Mr. MERRICK:

Q. Mr. Converse, I show you a plan dated May 4th, 1833, marked "Pl'ff 9;" please examine the place marked "Gravier basin" on this plan.

(Witness handed document.)

A. That was before my time.

Q. State if you recollect anything in regard to that locality.

A. I only know in regard to the lower side of Poydras street, where the steam cars ran in and ran back to Perdido street—the steam train of the Carrollton railroad.

Q. Will you show me on the plan marked "Def't A" where the cars ran?

(Witness handed document.)

A. The cars went in, sort of into the corner that way, and then ran back.

Q. On the right-hand side of Baronne street, going down towards Canal street?

A Right-hand side; yes, sir.

Q. What time was that; do you remember?

A. That was along in the forties.

Q. Along in the forties?

A. Yes, sir; I came here in 1839.

Q. On this plan marked "Def't A," was there a depot at the end of the property fronting on Baronne, Perdido, and Carroll streets?

25 A. Yes, sir; that was closed in.

Q. Do you remember what became of that depot?

A. My impression was that Schneider & Zuberbier became the owners of the property and built a theatre there—a *Herman* theatre.

Q. Do you remember any one ever claiming that property was a public square, or of its ever being used as a public square?

A. No, sir; I never did. I did not visit that neighborhood very often.

Q. You came down to your business there often, did you not?

A. No, sir; I lived up on Camp street.

Cross-examination.

By Mr. GILMORE:

Q. This property of which you speak in the square bounded by Baronne, Carroll, and Perdido streets is the site of that theatre that you speak of?

A. Yes, sir.

Q. That was the National theatre, wasn't it; that was the theatre built by Schneider & Zuberbier?

A. Yes, sir; the "German theatre" they called it.

Q. Afterwards known as the "Werlein theatre"?

A. Yes, sir; after that.

Q. "Werlein hall" it was afterwards named?

A. That is what I understand.

Q. That property stood upon the original site of the old Carrollton depot?

A. Yes, sir.

Redirect examination.

By Mr. MERRICK:

26 Q. Were there any buildings on the other side of Baronne street opposite the Carrollton depot?

A. I cannot tell exactly, but I think there were none at the time I speak of.

Q. Were there any other buildings on the river side of Baronne street, other than the Carrollton depot, in that square?

A. I am not positive, but I think there was one—and old building there, corner of Carroll and Poydras streets—but I would not be positive.

CHARLES LE BRETON, Esq., first being duly sworn, says:

Direct examination.

By Mr. MERRICK:

Q. Mr. Le Breton, how long have you been in the city of New Orleans?

A. I was born in the city of New Orleans, in the parish of Jefferson, on the land that is now known as "Audubon park;" that was my father's plantation.

Q. Do you remember the place marked "Gravier basin" on the map offered by plaintiff, dated July 18th, 1833?

A. Yes, sir.

Q. When do you first remember having seen the place, the locality which is marked on the map now shown you as "Gravier basin"?

A. It was about 1836, I believe.

Q. In 1836 do you remember whether Baronne street was mapped out there at the time or not?

A. Baronne street—I think the Carrollton railroad built a road

there in 1835, and in coming from Carrollton used to turn on the left side going towards the Poydras market, and some time
27 afterwards it changed its course (a few months afterwards, maybe; I don't recollect exactly) and went on the right side, on the tract of land which is bounded by Poydras, Carroll, Baronne, and Perdido streets.

Q. This is shown better on a plan marked "Def't A," is it not, as to where the road ran subsequently?

(Witness shown document.)

A. Yes, sir; a druggist had a store on Perdido street, on the corner—it was a German drug store—some few years after; I cannot exactly say the year.

Q. Were there any other buildings on that place besides the Carrollton depot?

A. Not that I remember of. It was a vacant lot before the Carrollton depot went there.

Q. Was there a vacant lot opposite?

A. There were a few buildings, some buildings of one story—unimportant buildings?

Q. Was this property afterwards a vacant lot or was it a public square?

A. I never knew it to be a public square; it may have been, but not of my knowledge.

Q. Anybody ever tell you at that time?

A. No, sir.

Q. Examine the map marked "Def't B" and state if that is a better map as to where the railroad ran when you first saw it.

(Witness shown document.)

A. At first it used to run on Poydras street, on the left coming from Carrollton.

Q. On the swamp side?

28 A. Yes, sir.

Q. And subseqently it was changed to run on the right side?

A. On the right side, entering into the lot there fronting on Poydras street.

Q. Afterwards it ran into a lot fronting on Baronne, Carroll, and Perdido?

A. Yes, sir; it went into the end; the car station was there.

Q. It was exactly at the end of that lot on Perdido—on the river side of Baronne street?

A. Yes, sir.

Q. What became of that Carrollton depot after that?

A. I don't remember that, sir.

Q. After it ceased to be used as a depot was it used for a public square?

A. Not that I remember; never heard of it. I don't know, but it is not of my knowledge.

Q. When did you say you first became acquainted with that locality?

A. It was in 1835, I think, going to school. You know my father had sold that place "Audubon park" and had gone about six miles further up, and so we used to come to school there Monday and return Saturday.

By Mr. MERRICK: In connection with the testimony of this witness I produce and offer in evidence maps marked "Def't A and D."

Cross-examination.

By Mr. GILMORE:

Q. The drug store of which you spoke was situated at the corner of Poydras and the river side of Baronne?

29 A. Yes, sir.

Q. Is it not a fact that after the Carrollton depot was removed to the small square bounded by Perdido, Carroll, Baronne, and Poydras streets there was a track running in there beyond the drug store, going towards Perdido street?

A. Yes, sir.

Q. Is it not a fact that after the Carrollton depot was moved from there that the property stood open for many years?

A. I do not remember that, because I never used to go on the railroad. I used to come in my carriage from my plantation.

Q. Do you remember when the Carrollton depot was moved from the corner of Baronne and Perdido streets and taken to Tivoli circle—in the neighborhood of Tivoli circle?

A. Yes, I recollect.

Q. What year was that?

A. That I don't know; a few years—one or two years—before the war or after. I don't remember.

Q. Did not the property on Baronne street, where the Carrollton Railroad depot had stood, remain open a long time after the removal of the depot?

A. I don't remember.

Q. Do you remember whether or not the property opposite the old site of the Carrollton depot remained open for a number of years?

A. I recollect a few old houses there that used to be occupied by those men retailing some——

Q. Shanties?

A. Yes, sir.

By Mr. MERRICK:

Q. Retailing what?

30 A. Some dry goods and other things, but I did not exactly take notice of what it was; but I recollect there was some fruit.

By Mr. GILMORE:

Q. They were shanties; no prominent buildings?
A. No, sir.

By Mr. MERRICK:

Q. What do you mean by prominent buildings, Mr. Le Breton?
A. I mean good buildings; to be left for fifteen or twenty or twenty-five years.
Q. These were just frame buildings?
A. Yes, sir; frame buildings, as far as I can recollect, you know.

Mr. EDWARD KING (colored), first being duly sworn, says:

Direct examination.

By Mr. MERRICK:

Q. Do you remember the property on the corner of Baronne, Perdido, and Carroll streets that was formerly occupied by the Globe theatre?
A. Yes, sir.
Q. And by Werlein hall?
A. Yes, sir.
Q. How far back do you remember that property?
A. Ever since 1844.
Q. Do you remember what it was used for when you first saw it; what was the property used for when you first saw it?
A. As near as I can recollect, it was used for a depot for the car stable.
Q. Do you remember how long it was used for a depot?
A. Well, it was used for several years; from that, I believe, clean until it was torn down.
31 Q. When it was torn down, do you remember what was done with the property?
A. That property was sold.
Q. What did they do with it after that; did they build a house on it or a theatre or what?
A. No, sir; they built a house on it, because I worked carpenter trade with a boss builder. They built a house on the property right where the "German theatre" was.
Q. I am speaking now of the location where the "German theatre" was built—where the "Werlein hall" was built; was there any building there before that Werlein hall was built except the car station? After the car station was removed did they leave it open or did they put up "Werlein hall"?
A. There was a church there at first—there was a church there with a big clock before the hall was put there.
Q. There was a church there?
A. Yes, sir; because I lived at the corner of Baronne and Union streets; that is where I lived.
Q. You lived at the corner of Baronne and Union streets?

A. I lived there from 1841 to 1844; that is, my owners, Jim Freret, lived there, not me.

Q. What was your business; you have a trade, haven't you?

A. Yes, sir.

Q. What is your trade?

A. Carpenter trade.

Q. Were there any buildings opposite, on the swamp side of Baronne street, opposite where the old Carrollton car station was?

A. There was an old house, pretty old, broken down; no-
32 body lived in it at that time.

Q. After that, were there any houses put there or any stores?

A. Yes, sir; there was a store put up after—after that house was broken down there was a store.

Q. What kind of a store was it?

A. It was a drug store. Now, that is between times, you know; there was several years between that time; it was not done all at once. Give me a little chance to study it over in my mind. I think there was a drug store put up there after the old house was torn down.

Cross-examination.

By Mr. GILMORE:

Q. This church of which you speak, where was that situated?

A. Sir?

Q. This church of which you speak, where was it situated?

A. That church was right at the point where the theatre burnt down.

Q. Was it on that ground or was it on the ground on the other corner, across from Perdido street?

A. It was on that ground right there.

Q. You are sure it was on this side of Perdido street?

A. Yes, sir.

Q. When was that, what year?

A. That church was there in 1844.

Q. That church was there in 1844?

A. Yes, sir.

Q. When was the depot put there?

A. The depot was put there—I think that was put there in the year 1841 or 1842; near about the time the Poydras market
33 was erected, as long as I can recollect.

Q. How long did the depot stand there—how many years was the depot there?

A. It was there a long time. I cannot exactly tell you. That was before the war, you know, and I had to go away and followed my carpenter trade.

Q. The depot was there when the war began, wasn't it?

A. I think it was.

Q. It was put there about 1840, you think?

A. 1840 or 1841.

Q. These stores which stand on the other side of the street today, when were they built?

A. Sir?

Q. The buildings on the other side of the street—that is, in the square bounded by Poydras, Baronne, Perdido, and Philippa streets—the buildings that are in that square fronting on Baronne street today, swamp side, when were they put up?

A. Well, they mostly was put up since the market.

Q. When was the market put up?

A. I worked on that market in 1841.

Q. Wasn't it originally contemplated that the market should occupy that portion of ground on which those stores are now built?

A. I made the sketch for the surveyor to survey that market; and the market line, it ran from Rampart street up to Baronne street. It didn't stop where it is now. It went up to Baronne street. That is what the city claimed for the market.

Q. Didn't it run also down towards Perdido street?

A. Sir?

34 Q. Didn't the market originally run down to Perdido street?

A. No, sir.

Redirect examination.

By Mr. MERRICK:

Q. How old are you?

A. Born in 1813.

Q. Where were you born?

A. Nashville, Tennessee.

Q. How old were you when you came down here?

A. I was nineteen years of age.

Q. Where did you go when you came down here to live—what place in New Orleans?

A. Well, I was seized by the bank for a debt, and I lived with Jim Freret for six years.

Q. And Jim Freret lived on the corner of what streets?

A. Of Baronne and Union streets.

Q. Then you first knew that place not in 1844, but when you were nineteen years of age?

A. Yes, sir.

Q. And you were born in 1813?

A. Yes, sir.

Q. That puts you here about 1832?

A. Yes, sir.

Q. Wasn't it nearer 1832 when you first saw that place than it was 1844?

A. That is the time I left here, in 1844.

Q. You were here until 1844?

A. Yes, sir; and when I came down here it must have been about——

Q. You were born in 1813?

35 A. Yes, sir.

Q. And you were how old when you got here?

A. I was nineteen years old when I got here, and I stayed there until 1844.

Q. On the corner of Union and Baronne streets?

A. Yes, sir.

Q. In Mr. Jim Freret's house?

A. Yes, sir.

By Mr. MERRICK: On behalf of defendant I offer, produce, and file in evidence document marked "I," City of New Orleans against John Klein, copy of record from the circuit court of the United States.

By Mr. GILMORE: Counsel for plaintiff objects to the offer in evidence of the record in the suit of The City of New Orleans against John Klein upon the ground that that record cannot form the basis of either estopppel or *res adjudicata*, the property having been dedicated to public use prior to the institution of the proceedings.

By the COURT: I think the objection goes to the effect.

By Mr. MERRICK: I also offer certified copy of the record of the suit of John Klein against The City of New Orleans, in which a judgment for $78,000.00 was obtained against the city and on which execution issued.

By Mr. GILMORE: I make same objection as above noted.

By the COURT: I make same ruling.

By Mr. MERRICK: I offer document marked "A," being contract between the City of New Orleans and the Carrollton railroad, dated July 18th, 1833.

36 I also offer in evidence document marked "B," dated 25th June, 1864, being lease from the New Orleans & Carrollton Railroad Co. to Magdalen Clauson.

I also offer in evidence document marked "C," being transfer from the New Orleans & Carrollton Railroad Co. to C. Schneider, L. Schneider, and H. Zuberbier.

I also offer document marked "D," being an agreement of contract between the city of New Orleans and Christian Schneider and Louis Schneider.

I also offer document marked "F," being sale of property by Edward R. Hogan to Bertrand Adoue.

I also offer document marked "G," being sale of real estate from Bertrand Adoue and others to P. Werlein and P. P. Werlein.

I also offer in evidence document marked "H," being sale by S. H. Werlein and others to P. Werlein.

I also offer in evidence plan marked "Def't C," being a plan of the depot when situated on the swamp side of Baronne street.

I also offer in evidence certificate of Pilie & Seaton concerning the "National theatre," dated November 5th, 1866, and marked "Def't F."

I also offer in evidence resolution of the city council, dated 29th May, 1833, marked "Def't G."

By Mr. GILMORE: The objection originally made by counsel for the city to the introduction of the record of the case in the United States circuit court of Klein against The City of New Orleans applies to all other evidence offered or to be offered for the purpose of showing *res adjudicata* or estoppel.

By Mr. MERRICK: I also offer in evidence the sale of this property by Andrew C. Lewis to Edward R. Hogan, dated No-
37 vember 30th, 1878, marked "E."

I also offer in evidence map marked "Def't I," showing location of the depot when on the swamp side of Baronne street.

I also offer in evidence copy of plan, marked "Def't K."

I also offer in evidence record of The City of New Orleans against Philip Werlein, No. 38752 of the docket of the civil district court, being a suit to injoin collection taxes and the city therein particularly.

NOTE.—It is agreed the property is worth at least the sum of fifteen thousand ($15,000.00) dollars.

Civil District Court, Div. C.

CITY OF NEW ORLEANS
vs.
PHILIP WERLEIN. } No. 45347.

Note of Evidence.

Counsel for defendant offers, introduces, and files in evidence a certificate of taxes from the city of New Orleans, bearing date March 18th, 1897, containing a statement of all the taxes paid to the city since the year.

Also a certificate of the assessment of the property from the office of the State tax collector of the city of New Orleans, bearing same date.

It is understood and agreed between counsel in this case that the statements made in these certificates are true, both as to the amount of the assessments and to the amount of money paid for taxes.

Subject to objections already made.

SAM'L L. GILMORE.

R. A. TICHENOR.

38 *Submitted.*

Extract from the Minutes of Division C.

FRIDAY, *April* 9, 1897.

Present: Hon. F. A. Monroe, judge.

Civil District Court, Division C.

CITY OF NEW ORLEANS
vs.
PHILIP WERLEIN. } No. 45347.

This case came up for trial on this day.

And after hearing argument of Messieurs Samuel L. Gilmore and R. A. Tichenor, attorneys for plaintiff, and of Edwin T. Merrick, Esq., attorney for defendant, this case having been submitted, the court took same under advisement.

Reasons for Judgment.

Filed May 17, 1897.

Civil District Court, Division C.

CITY OF NEW ORLEANS
vs.
PHILIP WERLEIN. } No. 45347.

Plaintiff sues for the recovery of a certain piece of ground situated in the city limits & described as "Place Gravier," alleging that the same is a *locus publicus*, and that defendant is unlawfully in possession thereof.

Defendant filed a plea of *res adjudicata*, which was overruled, and answered that said property is susceptible of private use and ownership, and that he has title thereto, and he further pleads that plaintiff is estopped to assert the contrary.

Plaintiff, by supplemental petition, also interposed a plea of *res adjudicata*, which was overruled, and the cause then went to trial upon its merits.

39 The evidence shows that the property in question was at one time included in a large tract or plantation which belonged to Jean Gravier, and that by reason of sales of portions of said tract by reference to plans and of certain plans to which it was said that he was a party disputes arose between him and between those claiming under him and the municipality as to whether certain portions of said tract designated respectively as "Gravier's basin," "Gravier's canal," and "Gravier's square" or "Place Gravier" had or had not been dedicated by said Gravier to public use, and these disputes apparently culminated about the year 1841 in a litigation between the municipality and the Carrollton Railroad

Company, in which the company claimed title as vendee of the Orleans Navigation Company, which latter company claimed to have purchased at sheriff's sale, made under execution against Jean Gravier, whilst the municipality claimed that the whole property involved in the controversy had been dedicated by Gravier to public use. The court *a qua* in disposing of the case held that those portions described as "Gravier's canal" and "Gravier's basin" had never been so dedicated, and that they belonged to the railroad company, but that the portion described as "Place Gravier" or "Gravier square" had been dedicated by the owner to public use and was public property. Under the administration of the municipality *and* this judgment was affirmed by the supreme court, with the amendment, however, that the railroad company was accorded the use of said "Place Gravier" during the unexpired term of its charter, agreeably to the terms of a certain contract which had been entered into between it and the municipality of date July 18, '33.

Carrollton Railroad Co. *vs.* Municipality No. 2, 19 La., 62.

40 Referring to this agreement, copies of which are in evidence, it seems that portions of the "Gravier canal" and "Gravier basin," which were held to belong to the railroad company, were considered necessary for the extension or prolongation of Poydras and Baronne streets respectively, and that the company ceded or transferred said portions to the municipality as the consideration of their being accorded the use of "Place Gravier," as stated, or rather, as it would appear, of their being accorded the use of that portion of what was then "Place Gravier," which constituted the property now in dispute.

Under said agreement & judgment, then, the company used said property for depot and other purposes until 1864, when it leased a part of it for three years to Magdalen Clauson, and this lease was followed, on Feb'y 24, '66, by a sale of its entire interest, described substantially as a right of occupancy, with reversion to the city, to Christian Schneider & others, which sale was made subject to the lease to Magdalen Clauson.

The purchasers constructed a theatre upon the property and in May, 1867, entered into a notarial contract with the city, whereby the latter agreed to purchase the building at the expiration of the right of occupancy. In May, 1876, John Klein obtained a monied judgment against the city, under which he caused a writ of *fieri facias* to issue from the U. S. circuit court, and the property in question to be thereunder seized and advertised for sale, and thereupon the city applied for an injunction to stay said sale perpetually, upon the following grounds (stating them in substance) and no others, to wit:

1. That said Klein had caused his judgment to be registered in the office of the administrator of public accounts, agreeably

41 to the provisions of act No. 5 of 1870, extra session, and had accepted and availed himself of the provisions of that act as a means of realizing upon said judgment, and that said act prohibited the issuance of a writ of *fieri facias* upon any judgment so registered, and that said prohibition was binding on Klein.

2. That Klein was not the owner of the judgment, but had transferred it to Lesessier & Bender.

3. That the writ issued for a much larger sum than the balance due on said judgment.

It does not appear to have been suggested in the pleadings that the property seized was a *locus publicus*, and upon the issues as presented the preliminary injunction was dissolved and complainant's bill dismissed, and the property was accordingly sold by the marshal to A. C. Lewis August 21, '78.

Upon Nov. 29, '78, Lewis sold said property to E. R. Hogan for $1,850.00. Upon Feb'y 8, '79, Hogan sold said property to Bertrand Adoue for $3,000. Upon August 4, '81, Adoue (who appears to have married a daughter of Christian Schneider), together with the owners of the building which had been erected thereon, sold said property and improvements to Philip & Philip Peter Werlein for $21,350.00, and Philip Werlein, the defendant, thereafter acquired the interest of his father, Philip Peter Werlein, by inheritance and by purchase from his coheirs, the latter in August, 1886.

It may be remarked that in the meanwhile, to wit, in 1883, the charter, and with it the right of occupancy of this property, of the Carrollton Railroad Company expired; and it may further be remarked that the improvements were long since destroyed by fire, and that it is only the bare lot which is now in controversy.

Aside from the opinion as reported in 19th Louisiana, there
42 has been filed in evidence apparently some, if not all, of the identical documents upon which that opinion was predicated, and the fact is made patent that the only title which the city of New Orleans ever possessed to the property in question resulted from its dedication to public use by the original proprietor, and that defendant, claiming said property in private ownership, traces his alleged title back, through *mean* conveyances and the marshal's sale, to the city as his author.

As an original proprietor, however, it is beyond controversy that property dedicated to public use cannot be made the subject of private ownership. It is out of commerce and not liable to seizure.

30 Ann., 66; 32 Ann., 624; 33 Ann., 562.

The defendant could then *forcibly* only upon the pleas of *res adjudicata* and estopple. The former was disposed of *in limine*, and the latter, in my opinion, cannot be sustained. A similar plea was urged in the matter of Municipality No. 2 *vs.* Orleans Cotton Press, 18 La., 272, and the supreme court disposed of it in the following terms:

(P. 272:) "The defendants urge that their rights and those of the persons under whom they claim have frequently been recognized by the mayor and alderman of the city, and by plaintiff, by putting them in possession of sundry portions of the batture, &c., by charging them with riparian burdens and duties, and by doing various other acts & things. These allegations, if proven, would have considerable force if the plaintiffs sued in the right of the municipality, or if they claimed anything belonging to the corporation; but they

only vindicate the right of the public to *loci publici*, things out of commerce, and in which the corporation represented by the
43 plaintiffs can have no property. The dedication to public use, being once established, cannot be affected by an act of the municipal officers."

Judge Dillon, in his work on Municipal Corporation, 4th ed., vol. 2, sec. 670, says:

"In Louisiana also it is considered that streets, levees, commons or public ground, &c., are land which are out of commerce, incapable of being alienated, and must ever remain free to the public. It is therefore held that no silence or length of time can deprive a public corporation of its power over public places; that its inaction may give an occupier an estate at sufference, but nothing more, and that inasmuch as such property is not susceptible of alienation by the corporation, no prescriptive or adverse right thereto can be acquired, since prescription presc*ri*pposes a title fairly acquired, but now capable of proof."

32 Ann., 526; 1 Ann., 215.

In dealing with a similar plea in "Mayor of New Orleans *vs.* United States," 10 Peters, 734, the Supreme Court of the United States said:

"But, in addition to the consideration that the city authorities probably acted in ignorance of their rights, it may be safely assumed that they had not the power by the acts referred to to divest the city of a vested interest in their common."

A different rule is applied by the courts to public corporations than that which is applied to individuals, and particularly is this true with respect to such corporations when acting as administrators or trustees of essentially public rights or public property.

In Canal Co. *vs.* City, 44 Ann., 396, the supreme court said:

44 "Were ordinary litigants and private interests alone concerned, it would doubtless be too late to obtain relief, but we cannot permit the public interests represented by the city of New Orleans to suffer injury by such as inadvertence of counsel. Precidents justify us in extending such protection to municipal corporations with a more liberal allowance than in the case of private litigants. 1 A., 215; 3 A., 230; 4 A., 180, 352; 7 A., 495."

For these reasons there should be judgment for pl't'ff, as prayed for, and the demand of defendant in reconvention should be rejected, all at the cost of the defendant.

Judgment.

Civil District Court, Division C.

CITY OF NEW ORLEANS
vs.
PHILIP WERLEIN. } No. 45347.

For the reasons assigned in the written opinion on this day delivered and filed, the court considering the law and the evidence to be in favor of the plaintiff and against the defendant—

It is ordered, adjudged, and decreed that there be judgment in favor of plaintiff, The City of New Orleans, and against the defendant, Philip Werlein, decreeing the following-described property, viz: "A certain portion of ground, with the improvements thereon, situated in the first district of this city, in the square bounded by Poydras, Perdido, Carroll, and Baronne streets, and measuring one hundred and fifty feet 6 inches front on Baronne street, fifty-seven feet five inches front on Perdido street, one hundred and fifty feet four ⅜ inches on Carroll street, and fifty-seven feet five inches and one line on the line nearest Poydras street," to be the property dedicated to public use; that the right of the City of New Orleans to the possession and administration of said property be, and is hereby, recognized, and defendant, Philip Werlein, is hereby ordered to deliver to said city possession of said property free from all incumbrances.

45

It is further ordered, adjudged, and decreed that the reconventional demand of the defendant be rejected, and that he pay all costs of this suit, without prejudice to any rights, legal or equitable, which defendant may have with respect to the recovery of money disbursed for or on account of said property.

Judgment rendered May 17th, 1897.

Judgment signed May 21st, 1897.

(Signed) F. A. MONROE, *Judge.*

Motion for Appeal.

Filed May 25, 1897, and entered on the minutes of same date.

Civil District Court, Division C.

CITY OF NEW ORLEANS *vs.* PHILIP WERLEIN. } No. 45347.

On motion of Edwin T. Merrick, of counsel for defendant, and on suggesting to the court that a judgment was rendered in this case on the seventeenth day of May and signed on the twenty-first day of May, 1897, and that mover feels aggrieved by said judgment and desires to appeal suspensively therefrom—

It is ordered by the court that a suspensive appeal be, and is hereby, granted in this case upon defendant's giving bond in the sum of one thousand ($1,000.00) dollars, and that said appeal be made returnable to the supreme court on the first Monday in June, 1897.

46

Bond on Appeal.

Filed May 26, 1897.

Know all men by these presents that we, Philip Werlein, as principal, and Thomas Sefton, as surety, are held and firmly bound unto Paul O. Guerin, clerk of the civil district court for the parish of Orleans, his successors, executors, administrators, and assigns, in

the sum of one thousand $\frac{00}{100}$ dollars, for the payment whereof we bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Sealed with our seal- and dated in the city of New Orleans on this — day of May, in the year of our Lord one thousand eight hundred and ninety-seven.

Whereas the above-bounden Philip Werlein has this day filed a motion for a suspensive appeal from a final judgment rendered against him in the suit of City of New Orleans *vs.* Philip Werlein, No. 45347 of the civil district court for the parish of Orleans, on the seventeenth day of May, 1897, and signed on the twenty-first day of May, 1897:

Now, the condition of the above obligation is such that the above bound Philip Werlein shall prosecute his suspensive appeal and shall satisfy whatever judgment may be rendered against him, or that the same shall be satisfied by the proceeds of his estate, real or personal, if he be cast in the appeal; otherwise, that the said Thomas Sefton shall be liable in his place.

(Signed) PH. WERLEIN,
" *p. p.* B. P. WERLEIN. [SEAL.]
" THOS. SEFTON. [SEAL.]

Signed, sealed, and delivered in the presence of—

— —.

47 *Agreement as to Making of Transcript.*

Filed May 29, 1897.

Civil District Court, Division C.

CITY OF NEW ORLEANS
vs.
PHILIP WERLEIN. } No. 45347.

An appeal having been taken in this case, returnable to supreme court—

It is understood and agreed in the above numbered and entitled cause that the following documents shall go up on appeal and be used and referred to on the appeal in the original, and that it shall be unnecessary to copy same in the transcript, viz:

Documents A, B, C, D, E, F, G, H, I, and K, offered by defendant and annexed to defendant's answer.

Nine documents and two maps offered by plaintiff, bearing numbers 1 to 9 respectively.

Five maps, bearing the marks "Def't A, Def't C, Def't I, Def't K" respectively, offered by defendant,

Document marked "Defendant G" being certified copy of two resolutions of city council of May 29th, 1833, and document marked "Defendant F" being report of commission, dated November 5th, 1866, to Schneider and Zuberbier on building known as National theatre.

It is further understood and agreed that either party may bring up in the original any other document and refer to same on appeal in the original, provided they have been offered and filed on the trial in the court below.

(Signed) R. A. TICHENOR,
Att'y for Plaintiff.
EDWIN T. MERRICK,
Att'y for Defendant.

48 *Transcript of Proceedings Had in Case No. 38752, Entitled Philip Werlein vs. City of New Orleans, Division A, of the Docket of this Honorable Court.*

Offered in evidence by counsel for defendant.

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans.

Civil District Court for the Parish of Orleans.

Petition for Injunction.

Filed April 13, 1893.

Civil District Court, Division A.

PHILIP WERLEIN
vs.
CITY OF NEW ORLEANS. } No. 38752.

To the honorable the civil district court for the parish of Orleans:

The petition of Philip Werlein, residing in the parish of Orleans and State of Louisiana, respectfully represents:

That your petitioner is the owner and in possession of a certain lot of ground in the first district, in square No. 231, bounded by Perdido, Carroll, Baronne, and Poydras streets. Said lot of ground measures 57 feet front on Perdido street by 150 feet in depth
49 on Baronne and Carroll streets and forms the corners of Perdido, Baronne, and Carroll streets.

Your petitioner shows that he acquired one undivided one-half interest in said property from Bertrand Adoue and others by an authentic act before N. B. Trist, a notary public of this city, passed on Aug. 4th, 1881, and recorded in Conveyance Office Book 114, folio 578.

Your petitioner further shows that Peter Werlein at said date acquired the other one undivided half interest in said property; that Peter Werlein died on the 17th day of August, 1885, and that his one undivided half interest became vested in Shepard Halsey Werlein, Miss Mary Werlein, and Lila Werlein, wife of A. B. Ware, and your petitioner as the heirs at-law of Peter Werlein in the amount of one undivided eighth interest each.

That on Aug. 7th, 1886, your petitioner acquired from his said

coheirs their three undivided one-third interests in and to said property by an act in authentic form passed on said day before N. B. Trist, notary public, in this city, and recorded in Conveyance Office Book 114, folio 578; all of which will more fully and at large appear by reference to said acts of purchase, to be hereafter annexed to this petition and made part hereof for greater certainty.

Your petitioner shows that his said above-described property was illegally and wrongfully assessed for taxes for the year 1887 in the name of Peter Werlein and Philip Werlein jointly, and that the City of New Orleans has advertised petitioner's property for sale under said illegal and void assessment for a balance of tax for $180.00 and int. claimed by the city; all of which will more fully and at large appear by reference to a copy of the advertisement to sell said property on April 15th, 1893, taken from the Daily Item, a newspaper published in New Orleans, of April 4th, 1893,
50 and annexed to this petition for greater certainty.

That a sale under this said illegal assessment will disturb petitioner in the actual possession and ownership of real estate which plaintiff has owned and possessed in full ever since Aug. 7th, 1886.

Your petitioner shows that the sale of petitioner's property under said illegal and void assessment would be injurious to petitioner's rights, and that a writ of injunction is necessary to protect petitioner's rights.

Wherefore, the annexed bond and affidavit considered, your petitioners pray that a writ of injunction issue in this case prohibiting the City of New Orleans from selling a certain lot of ground in the 1st district of the city of New Orleans, designated as lot No. 1, in square No. 231, bounded by Perdido, Baronne, Carroll, and Poydras streets, said lot of ground measuring 57 feet front on Perdido street by 150 feet in depth on Baronne street and forming the corners of Perdido & Baronne and Perdido & Carroll streets; that said assessment thereon be declared illegal, null, and void, and the writ of injunction be made perpetual, and for costs and such further and general relief as law, equity, and the nature of the case may require.

(Signed) MERRICK & MERRICK, *Att'ys.*

Affidavit of Philip Werlein.

Personally came and appeared before me Philip Werlein, plaintiff in this case, to me personally known, who, being first duly sworn, deposeth and says that all the allegations in the foregoing
51 petition are true and correct.

(Signed) PH. WERLEIN.

Sworn to and subscribed before me this 12 day of April, 1893.

[SEAL.] (Signed) EDWIN T. MERRICK, JR., *N. P.*

Order.

Let a writ of injunction issue as herein prayed for and according to law upon petitioner furnishing bond in the sum of one hundred and eighty dollars, conditioned as the law requires.

New Orleans, April 13th, 1893.

(Signed) THOS. C. W. ELLIS, *Judge.*

Answer of the City of New Orleans.

Filed May 1st, 1893.

Civil District Court, Division A.

PHILIP WERLEIN
vs.
CITY OF NEW ORLEANS. } No. 38752.

Now into court comes The City of New Orleans, made defendant herein, and for answer to plaintiff's petition denies all and singular the allegations thereof.

Further answering, defendant says that plaintiff is estopped from denying the legality and validity of the assessment and city taxes for which the said property is about to be sold for said taxes, because of his having recognized the validity and legality of said assessment by paying the State taxes thereon.

Wherefore it prays that plaintiff's demand be rejected, with costs, and that the injunction herein issued be dissolved, with
52 statutory damages, and for all and general relief.

(Signed) HORACE L. DUFOUR,
Assistant City Att'y.

Continued indefinitely.

Extract from the Minutes of Division A.

TUESDAY, *November* 14, 1893.

Present: Hon. T. C. W. Ellis, judge.

Civil District Court, Division A.

PHILIP WERLEIN
vs.
CITY OF NEW ORLEANS. } No. 38752.

By consent continued indefinitely.

Order Placing on Call Docket.

Extract from the Minutes of Division A.

THURSDAY, *January* 10, 1895.

Present: Hon. T. C. W. Ellis, judge.

Civil District Court, Division A.

PHILIP WERLEIN
vs.
CITY OF NEW ORLEANS. } No. 38752.

On motion of Horace L. Dufour, assistant city attorney,
It is ordered that this cause be fixed for trial in the call docket, to be called and fixed.

Certificate.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

I, Jas. C. Peyton, d'y clerk of the civil district court for the parish of Orleans, do hereby certify that the foregoing fifty-one (51)
53 pages do contain a true, correct, and complete transcript of all the proceedings had, documents filed in accordance with agreement of counsel as to making transcript, copied on folio 48, and evidence adduced upon the trial of the cause wherein City of New Orleans is plaintiff and Philip Werlein is defendant, instituted in this court and now in the records thereof under the No. 45347 of the docket of this honorable court, "division C," Honorable F. A. Monroe, judge.

In testimony whereof I have hereunto set my hand and affixed the impress of the seal of said court, at the city of New Orleans, on this fifteenth day of June, in the year of our Lord one thousand eight hundred and ninety-seven, and in the one hundred and twenty-first year of the Independence of the United States of America.

[SEAL.] JAS. C. PEYTON, *D'y Clerk.*

54 UNITED STATES OF AMERICA,
State of Louisiana.

Supreme Court of the State of Louisiana.

Proceedings Had in the Supreme Court of the State of Louisiana.

CITY OF NEW ORLEANS
vs.
PHILIP WERLEIN. } No. 12560.

Motion and Affidavit for Time.

In the Supreme Court of the State of Louisiana.

CITY OF NEW ORLEANS
vs.
PHILIP WERLEIN. } No. 12560.

On motion of Edwin T. Merrick, Esq., of counsel for defendant, appellant, and the affidavit of the clerk of the lower court, to the effect that there has not been time enough for the completion of the transcript of the appeal in this case, being considered, it is ordered by the court that the appellant be granted further time until the 21st day of June, A. D. 1897, to have the transcript of appeal completed and to file it in this court.

Entered and filed June 10th, 1897.

(Signed) T. McC. HYMAN, *Clerk.*

STATE OF LOUISIANA,
Civil District Court for the Parish of Orleans.

CITY OF NEW ORLEANS
vs.
PHILIP WERLEIN. } No. 45347.

James C. Peyton, deputy clerk of the civil district court for the parish of Orleans, being duly sworn, deposes and says that the transcript of appeal in the above entitled and numbered cause, returnable to the supreme court of the State of Louisiana on the first Monday of June, 1897, has not been completed for the reason that,

55 owing to the work performed on other transcripts of appeal returnable to the honorable the supreme court, said transcript- being very large, and took precedence owing to their earlier filing, is the reason we could not complete the transcript in this case within the time allowed, and that an additional delay until the 3rd Monday of June, 1897, is necessary to enable him to complete the same.

(Signed) JAS. C. PEYTON,
Deputy Clerk.

Sworn to and subscribed before me this fourth day of June, A. D. 1897.

(Signed) LOUIS BURTHE,
[SEAL.] *Deputy Clerk of the Civil District Court for the Parish of Orleans.*

(Endorsed:) No. 12560. Supreme court of Louisiana. City of New Orleans *vs.* Philip Werlein. Appeal from the civil district court for the parish of Orleans. Affidavit for extension of return day. Filed June 7th, 1897. (Signed) Paul E. Mortimer, deputy clerk. Entered June 10, 1897. (Signed) T. McC. Hyman, clerk. Transcript of appeal filed. No. 12560. Supreme court of the State of Louisiana. Filed June 19th, 1897. (Signed) Paul E. Mortimer, deputy clerk.

Original Papers Annexed to Transcript and Lodged in the Supreme Court on June 19th, 1897.

Document marked "A," being covenants between the corporation and the New Orleans and Carrollton Railroad Company.

18 Juillet 1833 "Conventions" Entre La Corporation et Le Chemin a Coulisses De la Nelle Orléans et de Carrolton."

En La Ville de la Nouvelle Orléans, Etat de La Louisiane, ce Dix-huit Juillet Mil huit Cent Trente Trois, et Dans la Cinquante huitième Année de l'indépendance Américaine;

Pardevant Felix de Armas, Notaire public dûment commissionné pour la Paroisse d'Orléans, y residant et en présence des temoins ci-aprés nommés et Soussignés:

56 Ont Comparu.

Monsr Dominique Francois Burthe, demeurant en cette Ville, agissant aux preséntes en qualité de Président de la "Compagnie du Chemin a Coulisses de la Nouvelle Orléans et de Carrolton" et en vertu d'une résolution de la dite Compagnie, prise dans sa Seance du Dix Juin dernier Copie de laquelle résolution est et demeure ci-annéxée pour recours.

Et Monsr Denis Prieur, Maire de cette Ville de la Nouvelle Orléans y résidant agissant pour et au nom de la Corporation des Maire, Aldermen et habitans de cette Ville, en Vertu de deux résolutions de Conseil de Ville prises dans sa séance du Vingt Neuf Mai dernier et approuvées le premier Juin dernier par le dit Maire Copies dûment Artificés desqu'elles résolutions sont et demeurent ci-annéxées pour recours;

Lesquels Srs comparans conviennent de ce qui suit:

La dite Compagnie du Chemin à Coulisses de la Nelle Orléans et de Carrolton cède et abandonne à la dite Corporation de cette Ville dès maintenant et à toujours sous la simple garantie de ses faits et promesses, ce accepté par le dit Sr Prieur pour la dite Corporation

1ᵉᵉ Une Portion de têrre devant servir au prolongement de la Rue Poydras comprise entre les lettres "A. B. C. & D," sur un Plan fait par Charles F. Zimpel, depute voyer pour le Faubourg Sᵗᵉ Marie, en date du quatre Mai dernier lequel après avoir été signé et paraphé. "*Ne Varietur*" par les Sᵗˢ Comparans, le Notaire, et les témoins soussignés est et demeure ci-annêxé pour recours; la dite portion de terrain fésant partie de l'ancien Bassin Gravier maintenant la propriété de la dite Compagnie au moyen de l'acquisition qu'elle en à faite suivant Acte au rapport de Wm. Christy Notaire public en cette Ville du Quartorze Juin dernier de la Compagnie de Navigation d'Orléans.

Et 2nd. Toute la portion de têrre nécessaire au prolongement de la Rue Baronne au travers du dit Bassin Gravier, dont elle fait aussi partie.

Et en considération des cession et abandon dont il vient d'être parlé le Dit Sieur Denis Prieur, en sa dite qualité abondonné à la Compagnie du Chemin à Coulisses, de la Nouvelle Orléans et de Carrolton ce accepté par la dit Sieur Burthe pour la dite Compagnie pendant tout le temps de la durée de sa Charte, et sous la simple garantie des faits et promesses, de la dite Corporation, la
57 jouissance pleine et entière dés portions de têrre comprises entre les lettres E. F. G. H. & K. L. M. N, au Plan sus dit, à la charge par la dite Compagnie ainsi que le dit Sieur Burthe l'y obligé en sa dite qualité de Président, de les faire immédiatement remblayer, et d'en transférer de Nouveau la jouissance à la dite Corporation, dans le cas où le Chemin a Coulisses projeté, ne serait pas établi et mis en operation dans les trois années qui suivront la date des résolutions ci-dessus mentionnées;

Au moyen de quoi, la dite Compagnie céde et transporte à la dite Corporation de cette ville, tours les droits de propriété de garantie et autres qu'elle à et peut avoir sur les dites deux portions de têrrain présentemens cédées et abandonnées à la dite Corporation pour par elle, qui en est en bonne et du possession ainsi que le reconnait le dit Sr Prieur és-qualités en jouir faire et disposer en toute propriété en vertu des présentes;

Fait et passé en l'etude, à la Nelle Orléans, les jour, Mois et au susdits, en présence de Messrs. Chas Victor Foulon et Amédée Ducatel témoins compétens qui ont signé avec les comparans, et le Notaire après lecture faite.

Originale Signé

D. PRIEUR, *Maire.*
BURTHE,
Pres't N. Orl. & C. R. R. Cᵒy.

Approuvé:

G. EUSTIS,
Avocat de la Ville.

AMÉDÉE DUCATEL.
C. V. FOULON.
FÉLIX DE ARMAS, *Not. Pub.*

STATE OF LOUISIANA, }
Parish of Orleans. }

I, John F. Coffey, a duly commissioned & qualified notary public in and for the parish of Orleans, State of Louisiana, and custodian of notarial records for the parish of Orleans, duly commissioned and qualified as such, do hereby certify that the above & foregoing is a true and correct copy of the original act, extant in the notarial records of Felix De Armas, formerly a notary public in this city, now deceased, and whose records are in my custody as custodian aforesaid.

58 In faith whereof I have hereto set my hand and seal as custodian aforesaid, at New Orleans, on this fifth day of February, A. D. eighteen hundred and seventy-nine.

[SEAL.] (Signed) J. F. COFFEY,
"*Not. Pub. & Custodian Notarial Records.*"

(Endorsed): "A," 18 "Juillet" 1833 "Conventions: 'Entre:' La Corporation Et Le 'Chemin' a Coulisses De La N^elle^ Orléans et de Carrolton." "J. F. Coffey," custodian of notarial records. No. 45347. C. D. C. Ph. of Orleans. Filed April 4th, '95. (Signed) Onofré Triay, d'y cl'k.

Translation of the Foregoing Document "A."

18th July, 1883.—Covenants between the corporation and the New Orleans and Carrollton Railroad Company.

In this city of New Orleans, State of Louisiana, this 18th of July 1833 and the 58th of the American Independence: before me Felix de Armas, notary public, duly commissioned for the parish of Orleans, therein residing, and in the presence of the witnesses hereinafter named and undersigned, have appeared: Mr. Dominique Francois Burthe, residing in this city, herein acting in his capacity of president of the New Orleans and Carrollton Railroad Company, by virtue of the resolution of the said company adopted at their sitting of the 10 of June last, copy of which said resolution is hereto annexed for reference:

And Mr. Denis Prieur, mayor of this city of New Orleans, therein residing acting for and in the name of the corporation of the mayor, aldermen and inhabitants of this city, by virtue of two resolutions of the city council, adopted at their meeting of the 29th of May last, and approved the first of June last by the said mayor, duly certified copies of which said resolutions are hereto annexed for reference; which said appearers covenant as follows:

The said New Orleans and Carrollton Railroad Company cedes and abandons to the said corporation of this city, from now and forever, under the simple guarantee of its acts and promises, which is accepted by the said Mr. Prieur for the said corporation;

First. A portion of ground to be used as a prolongation of
59 Poydras street, comprised within the letters "A" "B" "C" and "D," on a plan made by Chas. F. Zimpel, deputy surveyor for the Faubourg St. Mary, dated the 4th of May last, which after being signed and paraphed "*ne varietur*" by said appearers, the notary and witnesses undersigned, remains hereto annexed for reference; the said portion of ground making part of the late Gravier basin, now the property of the said company by means of the acquisition they made thereof by act in the office of William Christy, notary public in this city, dated the 14th of June last, from the Orleans Navigation Company; and

Secondly. All that portion of ground necessary to the prolongation of Baronne street across the said Gravier basin of which it also makes a part. And in consideration of the afore-recited cession and abandonment, the said Mr. Denis Prieur, in his said capacity, abandons to the New Orleans & Carrollton Railroad Company, which is accepted by the said Mr. Burthe for the said company during the whole term of the duration of their charter, and under the simple guarantee of the acts and promises of said corporation, the full and entire use of the portions of ground comprised within the letters "E" "F" "G" "H" & "K" "L" "M" "N" on the above plan, on the condition by the said company as the said Mr. Burthe obliges said company in his said capacity of president, to have the same immediately filled, and to transfer anew the use thereof to said corporation, in case the said projected railroad company shall not be established and put in operation in the three years which will follow the date of the resolution hereinabove mentioned.

By virtue of the foregoing the said company cedes and transfers to the said corporation of this city all the rights of ownership, guaranty and others which they have and may have in and to the said two portions of ground herein ceded and abandoned to the said corporation to be by it — which is in good and due possession thereof as is hereby acknowledged by the said Mr. Prieur in his said capacity to enjoy, use and dispose of in full ownership by virtue of these presents.

Done and passed in my office in New Orleans, the day, month and year aforesaid, in the presence of Messrs. Chs. Victor Foulon and Amedee Ducatel, competent witnesses, who have signed with the appearers, and the notary after reading.

Original signed: D. PRIEUR, *Mayor.*
BURTHE,
Pres't N. Orl. & C. R. R. C'y.

Approved:
G. EUSTIS,
City Attorney.

AMEDEE DUCATEL.
C. V. FOULON.
FELIX DE ARMAS, *Not. Pub.*

60 *Document Marked "B," Being Lease, New Orleans and Carrollton Railroad Company to Magdalen Clauson.*

STATE OF LOUISIANA, }
City of New Orleans. }

The New Orleans and Carrollton Railroad Company hereby leases to Magdalene Clauson, who accepts this lease, the building known as "the old Carrollton depot," in the city of New Orleans, together with the attached ground enclosed at this date, situated in the square bounded by Poydras, Baronne, Carroll, & Perdido streets; possession of said premises is hereby acknowledged by the said lessee.

This lease is agreed to begin on the first day of June, 1864, and continue until the thirty-first day of May, 1867, at which time the company will resume possession without the necessity of any previous notice or demand. The lessors agree to permit the erection upon the vacant land (leased with the said building) of any fireproof building or buildings, provided that no law or ordinance of the city or State authorities be infringed by such erection, and provided further that all such buildings shall be given up to the company at the expiration of the term of this lease without compensation to said lessee.

Provided further that said lessee shall keep all such buildings or other improvements insured at her own expense, and that she will transfer to the lessors the policies of insurance.

The lessee hereby promises and agrees to pay rent for said premises at the rate of one hundred dollars per month for and during the existence of the present war, and thereafter at the rate of one hundred and fifty dollars per month for and during the term of the lease, payable punctually on the first day of each month to the end of this lease. It is moreover expressly agreed that if at any time the said rent for any one or more months shall be in arrears for more than three days from the day on which the same is hereby stipulated to be paid, then the said lessors reserve the right of rescinding this lease, and the subsequent payment of the rent by the lessee shall not revive the lease without the written consent of the lessors.

The said lessee declared that she is acquainted with the condition of the premises and receives them in good order, and she
61 binds herself to keep them in like good order, to make such customary repairs as may be required, and to restore said premises to the lessors whenever this lease shall expire, in the same good order and condition, the ordinary wear and tear excepted.

It is also a condition of this lease that the said lessee shall not sublease said premises without the written consent of the lessors.

It is further agreed that any violation of this agreement or of any part thereof by said lessee shall be a sufficient cause for annulling this lease by the lessors, and upon any such violation having occurred or any default on payment of rent as above specified, the

lessors may, in writing, give notice thereof and demand possession of the premises within ten days after such notice, and the lessee binds herself thereafter to surrender the same as if the full term of the lease had expired.

Signed in duplicate in the city of New Orleans this twenty-fifth day of June, eighteen hundred and sixty-four.

(Signed) RICHARD I. EVANS,
Sec'ty N. O. & C. R. R. Co.
MAGDALENE CLASON.
HENRY CLASON, *Ag't.*

Original duly stamped.

STATE OF LOUISIANA, }
City of New Orleans. }

I, Selim Magner, a notary public, duly commissioned and sworn, in and for the parish of Orleans and the city of New Orleans, do hereby certify that I have carefully compared the foregoing instrument in writing with the original document unto me, notary, exhibited, and find the same to agree and coincide each with the other, word for word and letter for letter.

In faith whereof I grant these presents under my signa-
[SEAL.] ture and the impress of my seal of office, at New Orleans, on this 27th day of March, A. D. 1866.

(Signed) S. MAGNER, JR., *Not. Publ.*

62 (Endorsed:) 25th June, 1864. "B." Lease, N. O. & Car. R. R. Co. to Magdalen Clauson. Rec'd pay't, 4.05. S. M. No. 45347. C. D. C., Ph. of Orleans. Filed April 4th, '95. (Signed) Onofre Triay, d'y cl'k.

Document Marked "C," Being Sale of Lease, New Orleans — Carrollton Railroad Company to C. Schneider, L. Schneider, & H. Zuberbier.

STATE OF LOUISIANA, }
City of New Orleans. }

24TH FEBR'Y, 1866.

N. O. — Carrollton R. R. Co.
to
C. Schneider, L. Schneider, & H. Zuberbier. } Sale.

Be it known that on this twenty-fourth day of February, eighteen hundred and sixty-six, before me, Selim Magner, a notary public, duly commissioned and sworn, in and for the parish of Orleans, personally came and appeared George Currie Duncan, Esquire, of this city, president of the New Orleans and Carrol-ton Railroad Company, and herein acting by virtue of a resolution of the board of directors of said company adopted at their sitting of the eighteenth of December, 1865, a certified copy whereof is annexed to an act of deposit in my office, dated the fourteenth of February, 1866, who declared that for the consideration hereinafter set forth, and in pur-

suance of the public adjudication made by James B. Walton, an auctioneer in this city, on the twenty-fourth of January last, as will fully appear by reference to the procès verbal of said auctioneer, annexed to said act of deposit, he does by these presents in his said quality grant, bargain, assign, transfer, and set over unto Messieurs Christian Schneider, Louis Schneider, and Herman Zuberbier, of this city, here present, acknowledging possession and accepting for themselves, their heirs and assigns, each in the proportion of one undivided third, all the rights, title, and interest of the New Orleans and Carrollton Railroad Company for the term of about eighteen years or until the month of February, eighteen hundred and eighty-three, when the lot of ground hereinafter described reverts to the City of New Orleans, as appears from an act passed before the late Felix de Armas, a notary public, in this city, on the eighteenth of July, eighteen hundred and thirty-three, being a contract and convention between the corporation of New Orleans and the said Carrollton Railroad Company, and under which act said company

63 now holds in and to the lot or parcel of ground designated on a plan deposited in my office as plan No. 105 by the number five in square bounded by Baronne, Perdido, Carroll, and Poydras streets, according to which plan said lot measures one hundred and fifty feet six inches front on Baronne street, fifty-seven feet five inches front on Perdido street, one hundred and fifty feet four inches and three lines on Carroll street, and fifty-seven feet five inches in the rear, where it adjoins lot No. four on said plan, and said Duncan furthermore transfers unto said purchasers all the ownership of said company in and to the buildings and improvements on said lot or parcel of ground, to be the property of them, said purchasers; said lot of ground thus to revert to said city of New Orleans and the said buildings and improvements thereon are subject, together with lots one, two, three, and four, to a lease made to M. Clason at one hundred and fifty dollars a month, said lease expiring on the thirty-first of May, 1867, subject to which lease this act is hereby accepted.

By reference to a certificate of the recorder of mortgages in and for this city and parish, annexed to said act of deposit, it appears that there is recorded against said New Orleans and Carrollton Railroad Company and bearing on the buildings on said lot of ground, 1st, the draining privilege, of which said purchasers bind themselves to pay the balance due thereon; 2nd, the general mortgage resulting from a judgment in favor of Arthur Choppin against said company by the sixth district court of New Orleans on the fifteenth of January, 1861, for twenty-five thousand dollars, interest and costs, which said Duncan hereby binds said company to cause to be cancelled without delay, and as a security to said present purchasers said Duncan agrees that all the proceeds of this present transfer shall remain deposited with the undersigned notary until said judgment shall have been cancelled from the records of the mortgage office.

This transfer of rights in and to said lot of ground and sale of ownership in the buildings thereon is made for and in consideration

of the price and sum of fifteen thousand six hundred dollars, which the said Duncan in his said quality hereby acknowledges to have received in manner following, to wit:

Five thousand two hundred dollars in ready money, for which he grants acquittance, and the balance in the two several
64 promissory notes of said purchasers, made by them *in solido* to their own order and by them endorsed, dated the twenty-fourth of January, 1866, each for five thousand two hundred dollars, payable respectively in one and two years from their date, at the Canal bank, in this city, with interest thereon, at the rate of seven per cent. per annum, from date till maturity, and thereafter at eight per cent. per annum until paid, as a penal clause; which notes have been paraphed "*ne varietur*" by me, notary, to identify the same herewith.

And to secure the payment of said notes in capital and all interest thereon, as aforesaid, vendor's privilege and mortgage is hereby retained on the above-mentioned lot or parcel of ground and on the buildings and improvements thereon, said purchasers binding themselves not to underlet, sell, alienate, or dispose of said property and the rights presently transferred to the prejudice of this act.

The U. S. internal-revenue stamps of sixteen dollars on this act are hereto attached.

Thus done and passed in my office, at New Orleans aforesaid, on the day, month, and year first before written, in the presence of Edward G. Gottschalk and James Fahey, witnesses, of the full age of majority, residing in this city, who hereunto sign their names, together with the said appearers and me, notary, after reading hereof.

And before signing this act the said Duncan declared that he does hereby bind the said company to pay all taxes or drainage which may be due on said property up to the present year.

(Original signed) LOUIS SCHNEIDER.
C. SCHNEIDER.
H. ZUBERBIER.

E. G. GOTTSCHALK.
JAS. FAHEY.

G. CURRIE DUNCAN, *Pres't.*

S. MAGNER, *Not. Pub.*

65 I, the undersigned, custodian of notarial records for the parish of Orleans, State of Louisiana, hereby certify the foregoing act to be a true copy of the original, passed before S. Magner, notary public, deceased, on the 24th February, 1866.

Which act is now in my possession as custodian aforesaid.

New Orleans, Mar. 13th, 1878.

[SEAL.] (Signed) J. F. COFFEY,
Custodian of Notarial Records.

(Endorsed:) "C." 1866. 24th February, 1866. Price, $15,200. N. O.—Carrollton R. R. Co. to C. Schneider, L. Schneider, & H. Zuberbier. Sale of lease. J. F. Coffey, custodian of notarial records. No. 45347. C. D. C., Pb. of Orleans. Filed Ap'l 4th, '95. Onofre Triay, d'y cl'k.

Document Marked "D," Being Agreement of Contract Between the City of New Orleans and Christian Schneider, Louis Schneider, and Hermann Zuberbier.

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans.

Be it known that on this eighteenth day of May, in the year of our Lord one thousand eight hundred and sixty-seven, and of the Independence of the United States of America the ninety-first, before me, William Joseph Castell, a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Honorable Edward Heath, mayor of the city of New Orleans and herein acting in his said capacity, of the first part, and Messrs. Christian Schneider, Louis Schneider, and Hermann Zuberbier, all of the city of New Orleans, the said Christian Schneider being herein represented by said Louis Schneider, his attorney-in-fact, agreeably to act of procuration passed before Joseph Cohn, a notary public, in this city, under date of the 23rd of April, 1866, of the second part. A duly certified
66 copy of said act of procuration is hereunto annexed.

Which appearers declared that the common council of the city of New Orleans passed a resolution which was approved on the 7th of June, 1866, which is in the following words and figures, to wit:

No. 90, new series.

"Whereas the City of New Orleans and Carrollton Railroad Company, by an act passed before S. Magner, notary public, on the 24th day of February, 1866, sold to Christian Schneider, Louis Schneider, and Hermann Zuberbier all the buildings and improvements on a certain lot of ground in the square bounded by Poydras, Baronne, Perdido, and Carroll streets, and transferred to them the 'usufruct' acquired from the city by act passed before Felix de Armas, notary public, on the 18th day of July, 1833: Therefore

Be it resolved, That Christian Schneider, Louis Schneider, and Hermann Zuberbier be, and they are hereby, authorized to erect on the lot of ground, belonging to the city of New Orleans, in the square bounded by Perdido, Baronne, Poydras, and Carroll streets, measuring one hundred and fifty feet six inches on Baronne street, fifty-seven feet five inches front on Perdido street, and 150 feet 4⅜ inches front on Carroll street and 57 feet 5 inches on the line nearest to Poydras street, a solid, handsome four-story brick building; the necessary wood-work to be of seasoned lumber of the best quality, the basement to consist of six or eight stores, and the upper portion to be a theatre, all according to plans and specifications to be submitted to and approved by the city surveyor.

Be it further resolved, That the city surveyor shall upon the completion of the aforesaid building approve its construction. The city of New Orleans will after the expiration of the present charter

of the 'New Orleans and Carrollton Railroad Company,' to wit, on the 9th February, 1883, purchase from Christian Schneider, Louis Schneider, and Hermann Zuberbier the building erected by them, at a value to be fixed by four appraisers, two to be selected by each party, who in case of disagreement shall appoint an umpire, whose decision shall be final.

Be it further resolved, That the mayor is authorized to enter into any notarial acts necessary to the execution of this resolution.

(Signed) WM. McCULLOCH,
President Board of Assistant Aldermen.
(Signed) A. W. BOSWORTH,
President Board of Aldermen.

67 Approved June 7th, 1866.
(Signed) JOHN T. MONROE, *Mayor.*"

A duly certified copy of which resolution is hereunto annexed for reference.

That said parties of the second part have erected and completed said buildings, &c., as appears from the hereunto-annexed certificate, signed by the city surveyor, which is in the words and figures following, to wit:

"SURVEYOR'S OFFICE,
CITY OF NEW ORLEANS, *March* 28, 1867.

This is to certify that, in obedience to a resolution of the common council of the city of New Orleans, No. 90, new series, I approved the plans and specifications of a theatre called the 'National theatre,' which Messrs. Schneider & Zuberbier have caused to be erected on a piece of ground forming the corner of Baronne & Carroll & Perdido streets, and that said building has been erected in accordance with said plans and specifications and to my entire satisfaction and is hereby accepted by me.

LOUIS H. PILIE,
City Surveyor."

Now, therefore, in consideration of the premises, the said mayor, acting as aforesaid, declared, by virtue of the authority in him vested by said resolution No. 90, new series, he hereby binds the said City of New Orleans unto said parties of the second part, after the expiration of the present charter of the New Orleans and Carrollton Railroad Company, to wit, on the 9th of February, 1883, to purchase from said parties of the second part, to wit, Christian Schneider, Louis Schneider, and Hermann Zuberbier, the building erected by them (as aforesaid) at a value to be fixed by four appraisers, two to be selected by each party (namely, the City of New Orleans and said parties of the second part), who in case of disagreement shall appoint an umpire, whose decision shall be final.

And said parties of the second part hereby accept these presents.

United States internal-revenue stamps amounting to ten cents are affixed hereto, duly cancelled at the execution hereof.

Thus done and passed in my office, at New Orleans aforesaid, the day, month, and year first above written, in the
68 presence of Charles E. Lenes and Theodore Renshaw, witnesses of lawful age domiciled in this city, who hereunto sign their names with the parties and me, the said notary, after the reading of these presents.

(Signed) E. HEATH, *Mayor, Per. Pro.*
C. SCHNEIDER.
LOUIS SCHNEIDER.
LOUIS SCHNEIDER.
H. ZUBERBIER.

THEO. RENSHAW.
CHAS. E. LENES.
W. J. CASTELL, *Not. Pub.*

Approved.
[SEAL.]

H. D. OGDEN,
City Attorney.

A true copy.
New Orleans, July 24th, 1867.
(Signed) W. J. CASTELL, *Not. Pub.*

Registered in conveyance office, Book 110, fo. 663, New Orleans, December 11th, 1878.

L. H. CANONGE, *D. R.* [SEAL.]

(Endorsed :) 18 May, 1867. "D." Agreement of contract, City of New Orleans and Christian Schneider, Louis Schneider, and Hermann Zuberbier. W. J. Castell, not. pub. No. 45347. C. D. C., Ph. of Orleans. Filed Ap'l 4th, '95. Onofre Triay, d'y cl'k.

Document Marked "E," Being Sale of Property by Andrew C. Lewis to Edward R. Hogan.

UNITED STATES OF AMERICA,
State of Louisiana.

Be it known that on this twenty-ninth day of the month of November, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the United States of America the one hundred and second, before me, Michael Gernon, a notary public, duly commissioned and sworn, for the parish and city of New Orleans, State of Louisiana, and in the presence of the witnesses hereinafter named and undersigned, personally appeared Andrew C. Lewis, Esqr., a resident of the city of New Orleans, who declared that for the consideration of the price and sum of eighteen hundred and fifty dollars cash, to him
69 well and truly paid, the receipt whereof is hereby acknowledged, he does by these presents grant, bargain, sell, convey, transfer, assign, set over, and deliver, with all legal warranties and with full subrogation and substitution to all his rights and actions in warranty against all preceding vendors or possessors

unto Edward Robert Hogan, Esq, also a resident of the city of New Orleans, here present, accepting and purchasing for himself, his heirs and assigns, and acknowledging delivery and due possession thereof, the following-described property, to wit: A certain piece or portion of ground situate in the first district of this city, in the square bounded by Poydras, Perdido, Baronne, and Carroll streets. The said piece or portion of ground measures one hundred and fifty feet and six inches front on Baronne street, fifty-seven feet and five lines on Perdido street, one hundred and fifty feet and four and three-eights inches on Carroll street, and fifty-seven feet and five inches on the line nearest to Poydras street, being the same property which the present vendor acquired by purchase at a public sale made by Jack Wharton, United States marshal, at the suit of John Klein *versus* The City of New Orleans, on the twenty-first day of August, in the year of our Lord one thousand eight hundred and seventy-eight; to have and to hold the said property unto the said purchaser, his heirs and assigns forever.

And the said vendor, moreover, transfer unto the said purchaser all the rights and actions of warranty to which he is or may be entitled against all the former owners and proprietors of the property herein conveyed, subrogating the said purchaser to the said rights and actions, to be by him enjoyed and exercised in the manner as they might have been by the said vendor himself.

By reference to the certificate from the register of conveyances in and for this city and parish, it does not appear that the present vendor, Andrew C. Lewis, has alienated the before-described property since he acquired the same, and the parties hereto dispense with the production of a certificate from the recorder of mortgages for this city and parish as is required by article 3328, Civil
70 Code of Louisiana. The State, city, and drainage tax on the above-described property have been paid.

Thus done and passed in my office, at the city of New Orleans, in the presence of James G. Gernon and Frank H. Goelet, witnesses, of lawful age and domiciliated in this city, who hereunto signed their names, together with the said parties and me, the said notary.

(Original signed) A. C. LEWIS.
E. R. HOGAN.
MICH'L GERNON, *Not. Pub.*

JAS. G. GERNON.
F. H. GOELET.

I certify the foregoing to be a true and correct copy of the original on file in the records of my office.

New Orleans, November 30th, 1878.

[SEAL.] (Signed) MICH'L GERNON, *Not. Pub.*

(Endorsed:) Sale of property by Andrew C. Lewis to Edward R. Hogan. New Orleans, November 30th, 1878. Property bought at marshal's sale. Original registered in conveyance office, in Book 111, fo. 665. Def't "E." Mich'l Gernon, notary public, No. 9 Carondelet street. No. 9462. 5th dist. court. Filed Dec. 17, '78.

Jno. J. Harman, d'y cl'k. No. 45347. C. D. C., Ph. of Orleans. Identified with bill of exceptions April 28, '95. (Signed) F. A. Monroe, judge. Filed Ap'l 4th, '95. (Signed) Onofre Triay, d'y cl'k.

Document "F," Being Sale of Property by Edward R. Hogan to Bertrand Adoue.

STATE OF LOUISIANA, }
Parish and City of New Orleans. }

Be it known that on this eighth day of February, in the year of our Lord one thousand eight hundred and seventy-nine, and of the Independence of the United States of America the one hundred and third, before me, Andrew Hero, Jr., a notary public in and for the parish and city of New Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Edward R. Hagan, of this city, who declared that for the consideration
71 and on the terms and conditions hereinafter expressed, he does by these presents grant, bargain, sell, convey, transfer, assign, and set over with all legal warranties unto Bertrand Adoue, of the city of Galveston, in the State of Texas, here present, accepting and purchasing for himself, his heirs and assigns, and acknowledging delivery and possession thereof, a certain piece or portion of ground, together with all the rights, ways, privileges, and appurtenances thereunto belonging or in anywise appertaining, situated in the first district of this city, in the square bounded by Poydras, Perdido, Baronne, and Carroll streets, and measuring one hundred and fifty feet six inches front on Baronne street, fifty-seven feet and five lines front on Perdido street, one hundred and fifty feet four and three-eighths inches front on Carroll street, and fifty-seven feet five inches on the line nearest Poydras street, which said property was acquired by the present vendor by purchase from Andrew C. Lewis, by an act passed before Michael Gernon, a notary, in this city, on the twenty-ninth day of November, eighteen hundred and seventy-eight; to have and to hold the said property and appurtenances unto the said purchaser, his heirs and assigns forever.

And the said vendor hereby binds himself and his heirs forever to warrant and defend the property and appurtenances herein conveyed against all legal claims and demands whatever.

The said vendor moreover transfers unto the said purchaser all the rights and actions of warranty to which he is or may be entitled against all the former proprietors of the property and appurtenances herein conveyed, subrogating the said purchaser to the said rights and actions, to be by him enjoyed and exercised in the same manner as they might have been by the said vendor.

This sale is made and accepted for and in consideration of the price and sum of three thousand dollars, which said sum has been paid cash in ready current money at the execution hereof by said purchaser unto the aforesaid vendor, who hereby acknowledges the

receipt thereof, and grants the said purchaser a full acquittance and discharge in the premises.

72 According to the annexed certificates of the register of conveyances and recorder of mortgages in and for this parish, of even date herewith, it will be seen that the herein-described property stands registered in the name of said vendor and has not heretofore been alienated by him, and also that the same is free from all mortgages or incumbrances in his name, save the privileges for drainage; and that in the name of Andrew C. Lewis it is subject to no other mortgage than the general one in favor of Betsey Wilkins, resulting from his bond as her tutor; which said general mortgage the present vendor binds and obligates himself to have cancelled and erased within the shortest possible time after the date hereof.

The said purchaser hereby assumes the payment of all taxes exigible against said property during the present year.

Thus done and passed in my office, in New Orleans aforesaid, in the presence of David J. Dowers and Francis Graham, witnesses, both of this city, who hereunto sign their names with the parties and me, the said notary, the day and date aforesaid.

(Original signed) E. R. HAGAN.
FRANCIS GRAHAM.
ANDREW HERO, JR., *Not. Pub.*

B. ADOUE.
D. J. DOWERS.

A true copy of the original act on file and of record in my office. New Orleans, Feb. 17, 1879.

[SEAL.] (Signed) ANDREW HERO, *Not. Pub.*

(Endorsed:) "F." February 8, 1879. $3,000. Sale of property by Edward R. Hagan to Bertrand Adoue. A. Hero, Jr., notary public, 17 Commercial place, New Orleans. No. 45347. C. D. C., Ph. of Orleans. Identified with bill of exceptions April 28, '95. (Signed) F. A. Monroe, judge. Filed Ap'l 4th, '95. Onofre Triay, d'y cl'k.

Document "G," Being Sale Real Estate, Bertrand Adoue and Others to P. Werlein and P. P. Werlein.

73 STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans.

Be it known that on this fourth day of August, in the year of our Lord one thousand eight hundred and eighty-one, and of the Independence of the United States of America the one hundred and sixth, before me, Nicholas Browse Trist, a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Mrs. Clementine A. Schneider, the wife, of lawful age, of John Augustus Blaffer, of

this city, and by her said husband herein duly authorized and assisted, and said John Augustus Blaffer herein appearing in his individual capacity for the purpose of authorizing and assisting his said wife herein, and also herein acting for and in the name and behalf and as the duly authorized agent and attorney-in-fact of the following-named persons, to wit, 1st, Bertrand Adoue, of the city of Galveston and State of Texas, by virtue of the annexed power of attorney, dated May 12th, 1881, and acknowledged on the same day before J. Lovenberg, a commissioner of deeds for Louisiana in Galveston, Texas; 2nd, Mrs. Albertine Schneider, the wife, of lawful age, of said Bertrand Adoue, by virtue of a power of attorney, wherein she is duly authorized and assisted by her said husband, dated May 6th, 1879, acknowledged on the same day before Wm. R. Johnson, a commissioner of deeds for Louisiana in said city of Galveston, and annexed to an act of sale to Mrs. L. M. Baker, passed before the undersigned notary on the 4th day of April, 1881; 3rd, Mrs. Imogene C. Schneider, the wife, of lawful age, of Theodore O. Vogel, of Galveston, Texas, by virtue of a power of attorney, wherein she is duly authorized by her said husband, dated March 9th, 1881, acknowledged on the same day before said Commissioner Johnson and also annexed for reference to said act of sale to Mrs. Baker; 4th, Mrs. Wilhelmine Schneider, the wife, of lawful age, of Marie Joseph Charles Alfred Touchemoulin, of Strasbourg, Germany, by virtue of a power of attorney, wherein she is duly authorized by her said husband, dated January 22nd, 1877, acknowledged on the same day before C. Schwartzmann, United States consular agent at Kehl, Germany, and deposited for
74 record and reference in the office of Andrew Hero, Jr., a notary in this city, as per act passed before him on the fifteenth day of February, 1877, a duly certified copy of which is also annexed to said act of sale to Mrs. Baker; 5th, Jules E. Schneider, a resident of Dallas, Texas, by virtue of two powers of attorney, one thereof executed on the 15th day of February, 1877, by act before said notary, Hero, and the other, also annexed to said act of sale to Mrs. Baker, dated May 2d, 1879, and acknowledged on the same day before R. W. Goldthwaite, a notary public in and for the county of Dallas and State of Texas, whose capacity and signature are duly certified to, under their official seals and signatures, by the clerk and judge of the county court of said county of Dallas; 6th, Herman Zuberbier, a resident of this city, by virtue of a power of attorney executed before the undersigned notary on the twenty-sixth day of April, 1881, and, 7th, Mrs. Lydia Maria Wise, the widow by first marriage of the late Louis Schneider and now the wife of Presly C. Baker, of Galveston, Texas, by virtue of the annexed power of attorney, wherein she is duly authorized by her said husband, executed on the twelfth day of May, 1881, and acknowledged on the same day before said Commissioner Johnson, which appearers declared that, in confirmation of an adjudication made on the twenty-sixth day of March, 1881, by Nicholas J. Hoey, auctioneer, in this city, whose procès verbal thereof is annexed, for reference, to said act of sale to Mrs. Baker, and for the price and upon the terms and conditions hereinafter expressed,

they do, in their respective capacities, by these presents grant, bargain, sell, convey, transfer, assign, and set over, under all the warranties of law and with substitution and subrogation to all the rights and actions in warranty of the vendors or warrantors, unto Philip Werlein and Philip Peter Werlein, both of this city, here present accepting and purchasing, in equal undivided proportions to each, for themselves, their heirs and assigns, and acknowledging delivery and possession thereof, the following-described property, to wit:

A certain piece or portion of ground, with all the buildings and improvements thereon, rights, ways, privileges, and appurtenances thereunto belonging or in anywise appertaining, situated in the first district of this city, in the square bounded by Poydras, Perdido, Baronne, and Carroll streets, and measuring one hundred and
75 fifty feet six inches front on Baronne street, fifty-seven feet and five lines front on Perdido street, one hundred and fifty feet four and three-eighths inches front on Carroll streets, and fifty-seven feet five inches on the line nearest Poydras street, the buildings on said portion of ground being now or formerly known as the "National theatre." Said portion of ground was acquired by said Bertrand Adoue by purchase from Edward R. Hagan, by act passed before A. Hero, Jr., a notary public, in this city, on the 8th day of February, 1879, registered in the conveyance office of this parish, in Book 110, folio 716; the said Adoue, although the title was taken in his individual name, having in reality made said purchase for the other vendors herein in the proportions following, to wit: one undivided third for said Herman Zuberbier, one undivided third for said Mrs. Baker, and one undivided third for the said Mrs. Blaffer, Mrs. Vogel, Mrs. Adoue, Mrs. Touchemoulin, and Jules E. Schneider. At the time of said purchase the building on said portion of ground, and known as aforesaid as the National theatre, was owned by the said parties in the above-recited undivided proportions, the same having been erected thereon by said Herman Zuberbier and by the late Christian and Louis Schneider under contract with the City of New Orleans, executed before Wm. J. Castell, notary, in this city, on the 18th of May, 1867, the said portion of ground being then held by said last-named parties as assignees of the New Orleans and Carrollton Railroad Company of all its rights and privileges under a contract and convention between the corporation of New Orleans and said railroad company, passed before F. de Armas, late a notary public, in this city, on the 18th of July, 1833. The said Mrs. Blaffer, Mrs. Adoue, Mrs. Vogel, Mrs. Touchemoulin, and Jules E. Schneider inherited together the one-third thereof from their said father, Christian Schneider, and their mother, Mrs. Eliza S. Schneider, both deceased, having been recognized as their sole and only heirs, and as such put in possession of their estates by judgment of the honorable the second district court for the parish of Orleans, rendered and signed on the 7th of March, 1877, in the matter of the succession of said Christian Schneider, No. 39158 of the docket of said court, a copy of which, duly certified, is annexed for reference to said act of sale to Mrs. Baker, and the said Mrs. Baker acquired

the one undivided third of said building as the universal heir and legatee of her first husband, the said Louis Schneider.

To have and to hold the said property and appurtenances
76 unto the said purchaser-, their heirs and assigns forever, by virtue hereof. This sale is made and accepted, according to the terms of said adjudication, for and in consideration of the price and sum of twenty-one thousand three hundred and fifty dollars, of which five thousand three hundred and thirty-seven $\frac{50}{100}$ dollars have been paid in ready money by the purchasers, who for the balance have furnished nine several promissory notes, made by them to their own order and by themselves endorsed, dated March 26th, 1881, the date of said adjudication, each for the sum of seventeen hundred and seventy-nine $16\frac{2}{3}$–100 dollars, three thereof, numbered 1, 2, & 3, payable one year after date; three thereof, also numbered 1, 2, & 3, payable two years after date, and three thereof, also numbered 1, 2, & 3, payable three years after date, all bearing interest at the rate of eight per cent. per annum from date until paid; which notes have been paraphed *ne varietur* by me, the said notary, for identification herewith and delivered to the said vendors, who in person and by attorney acknowledge the receipt of the same and grant acquittance therefor; and in case it shall become necessary to institute legal proceedings for the recovery of the amount of the said notes or of any part thereof the said purchasers bind themselves to pay the fees of the attorney-at-law who may be employed for that purpose, which fees are hereby fixed at five per cent. on the amount due and sued for.

And the said purchasers, moreover, bind themselves to keep the buildings on the said property constantly insured against loss by fire by insurers approved of by the vendors and for an amount not less than twenty thousand dollars, and to transfer and deliver the policies of insurance to the said vendor until the full and final payment of the said notes, hereby consenting and agreeing that the said vendors shall have the right to transfer such policies to any future holder or holders of the said notes, and in case of failure of the said purchasers to effect such insurance the holder or holders of the said notes, without being bound thereto or responsible for not so doing, shall have the right to effect such insurance, and the reimbursement of all sums paid for that purpose shall be secured by the mortgage herein granted.

Now, therefore, in order to secure the full and punctual payment of the said notes, in principal and interest, and all costs, including the attorney's fees aforesaid, the property herein conveyed is
77 and shall remain specially mortgaged and affected by privilege in favor of the said vendor or any future holders of said notes until final payment, the said purchasers hereby binding themselves and their heirs not to sell, alienate, or encumber the said herein-conveyed property and appurtenances to the prejudice of this act.

By reference to the hereto-annexed certificates respectively from the conveyance and mortgage office of this city it will appear that

said property has not heretofore been alienated by the present vendors, and that it is free from all incumbrances in their names.

Receipts have been exhibited to me, notary, showing the payment of all taxes on said property for the last ten years, except the State tax of 1897, including the special city judgment tax of 1880 and the State and city taxes of 1881. The vendors warrant the purchasers that the said State tax of 1877 has been paid, the receipt having been lost or mislaid.

Thus done and passed in my office, at New Orleans, the day, month, and year first above written, in the presence of Adolphe Demarest, Jr., and Eugene F. Parham, competent witnesses, residing in this city, who hereunto sign their names with the appearers and me, notary, after reading of the whole.

(Original signed) J. A. BLAFFER.
CLEMENTINE A. BLAFFER.
PH. P. WERLEIN.
PH. WERLEIN.
N. B. TRIST, *Not. Pub.*

A. DEMAREST, JR.
E. F. PARHAM.

I hereby certify the above to be a true copy of the original on file in my notarial records, as witness my official seal & signature, at New Orleans, this 4th day of Aug't, 1881. Eight words interlined approved.

[SEAL.] (Signed) N. B. TRIST, *Not. Pub.*

(Endorsed:) "G." August 4, 1881. Sale real estate, Bertrand Adoue and others to P. Werlein and P. P. Werlein. Reg. in C. O., Bk. 114, p. 578. Rec. in M. O., Bk. 184, p. 730. Copy. N. B. Trist, N. P. No. 45347. C. D. C., Ph. of Orleans. Identified with bill of exceptions Ap'l 28, '95. (Signed) F. A. Monroe, judge. Filed Ap'l 4th, '95. (Signed) Onofre Triay, d'y cl'k.

78 *Document Marked "H," Being Sale of Real Estate, S. H. Werlein & Others to P. Werlein.*

No. —.

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans.

Be it known that on this seventh day of August, in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the United States of America the one hundred & seventh, before me, Nicholas Browse Trist, a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Shephard Halsey Werlein, Miss Mary Werlein, of lawful age, both residents of this city and herein acting for themselves, and Eugene F. Parham, also of this city, herein acting for and in the name and behalf and as

the duly authorized agent and attorney-in-fact of Mrs. Lila Werlein, the wife, of lawful age, of Allison B. Ware, of Santa Rosa, California, by virtue of the annexed power of attorney, wherein she is duly authorized by her said husband, executed and acknowledged on the eighth day of July, 1886, before F. G. Nagle, a notary public in and for the county of Sonoma, in said State, and whose official capacity is duly certified to, under the great seal of the State of California, by the secretary of state thereof, which appearers severally declared that for the price and upon the terms and conditions hereinafter expressed they do in their respective capacities by these presents grant, bargain, sell, convey, transfer, assign, and set over, under all the warranties of law and with substitution and subrogation to all their and constituents' rights and actions in warranty against any and all antecedent vendors or warrantors, unto Philip Werlein, also of this city, here present, accepting and purchasing for himself, his heirs and assigns, and acknowledging delivery and possession thereof, all their shares, rights, title, and interest, being one undivided eighth (⅛) to each of said vendors & together three-eighths (⅜), of, in, and to the following-described property, to wit: A certain
79 piece or portion of ground, with all the buildings and improvements thereon, rights, ways, privileges, and appurtenances thereunto belonging or in anywise appertaining, situated in the First district of this city, in the square bounded by Poydras, Perdido, Baronne, and Carroll streets and measuring one hundred and fifty feet six inches front on Baronne street, fifty-seven feet and five lines front on Perdido street, one hundred and fifty feet four and three-eighths inches front on Carroll street, and fifty-seven feet five inches on the line nearest Poydras street, the building on said portion of ground being formerly known as the National theatre.

The present vendors acquired their interest in said property as heirs of their father, the late Philip Peter Werlein, who acquired the one undivided half thereof by purchase from Bertrand Adoue and others by act passed before the undersigned notary on the fourth day of August, 1881, registered in the conveyance office of this parish, in Book 114, fo. 578.

To have and to hold the said herein-conveyed property and appurtenances with the said purchaser, his heirs and assigns forever, by virtue hereof.

This sale is made and accepted for and in consideration of the price and sum of nine thousand dollars, which the said purchaser has paid in ready current money to said vendors, who, in person and by attorney, acknowledge the receipt of their respective shares thereof and grant acquittance therefor.

By reference to the hereto-annexed certificates respectively from the conveyance and mortgage offices of this parish, it will appear that said property has not heretofore been alienated by the present vendors nor by the late Philip Peter Werlein, and that it is free from all encumbrances in their names except the inscription of the State taxes of 1886 on an assessment of $25,000, which taxes are assumed by the purchaser.

According to tax receipts exhibited and annexed certificates from the proper officers, it appears that all the State taxes on said property have been paid from 1876 to 1885, with the exception of State tax of 1877, which the parties claim have been paid, and that all city taxes in the names of former owners have been paid from 1870 to 1885, inclusive.

80 Thus done and passed in my office, at New Orleans, the day, month, and year first above written, in the presence of John Demarest and Ambrose Smith, competent witnesses, residing in the city, who hereunto sign their names with the appearers and me, notary, after reading of the whole.

(Original signed) S. H. WERLEIN.
MARY WERLEIN.
p. p. LILLA WARE.
E. F. PARHAM.
PH. WERLEIN.

AMBROSE SMITH.
J. DEMAREST.
N. B. TRIST, *Not. Pub.*

I hereby certify the above and foregoing to be a true copy of the original on file in my notarial records.

As witness my official seal and signature, at New Orleans, this 7th day of August, 1886.

[SEAL.] (Signed) N. B. TRIST, *Not. Pub.*

(Endorsed:) August 7th, 1886. "H." Sale real estate, S. H. Werlein & others to P. Werlein. Reg. C. O., Bk. 124, fo. 330. Copy. N. B. Trist, N. P., 25 Carondelet St., N. O. No. 45347. Civil district court. Identified with bill of exceptions Ap'l 28, '95. (Signed) F. A. Monroe, judge. No. 45347. C. D. C., Ph. of Orleans. Filed Ap'l 4th, '95. (Signed) Onofre Triay, d'y cl'k.

Document Marked Exhibit "I," Being Copy of Record of the Proceedings in the United States Circuit Court in the Suit Entitled The City of New Orleans vs. John Klein, No. 8461.

UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana, New Orleans Division.

CITY OF NEW ORLEANS
vs.
JOHN KLEIN. } No. 8461. In Equity.

81 TRANSCRIPT OF RECORD.

Bill of Complaint.

Filed April 20th, 1878.

U. S. Circuit Court.

CITY OF NEW ORLEANS
vs.
JOHN KLEIN. } No. 8461.

To the honorable the judges of the U. S. circuit court for the district of Louisiana:

The City of New Orleans, a public corporation chartered by the laws of Louisiana and a citizen of the State of Louisiana, herein represented by Edward Pilsbury, mayor of said city, brings this her bill of complaint against John Klein, a citizen of the State of Mississippi, *being* business in New Orleans; and thereupon your orator complains and says:

That the said John Klein has seized, under a writ of *pluries fieri facias* issued from this honorable court, on the law side thereof, in suit No. 7801, entitled John Klein *vs.* The City of New Orleans, the following-described property, to wit:

A certain lot of ground situated in the first district of this city, in the square bounded by Baronne, Poydras, Penn, and Per-
82 dido streets, designated by the lot No. 6 on a plan deposited in the office of Selim Magner, late a notary public of this city, and designated as plan No. 105, measuring 62 feet 9 inches front on Baronne street, 74 feet 6 inches on Penn street, by a depth of 68 feet 4 inches on the side line towards Poydras street, and 70 feet 8 inches on the side line towards Perdido street, which is subject to:

1. A lease to Henry Kern, as transferee of James A. Doyhoff and Luther Holsworth, by act before Selim Magner, late a notary public of this city, from the New Orleans and Carrollton Railroad Company, which lease expires on the — day of February, 1883.

2. To a building contract between Henry Kern and B. Fellman

and the City of New Orleans, passed before H. C. Dibble, notary public, on the 25th day of March, 1868.

2. All the right, title, and interest of the city of New Orleans in and to the portion of ground described as follows, together with all the right, title, and interest of said city in and to the buildings and improvements on said portion of ground known as the National theatre:

The lot of ground bounded by Baronne, Perdido, Carroll, and Poydras, measuring one hundred and fifty feet and six inches on Baronne street, fifty-seven feet and five inches on Perdido street, one hundred and fifty feet and four and three-eighths inches on Carroll street, and fifty-seven feet and five inches on the line nearest to Poydras.

Which foregoing lot of ground is subject to the usufruct of the New Orleans and Carrollton Railroad Company until the 9th day of February, 1883.

Reference is made for more particulars to resolution No. 90, new series, passed by the common council, and approved June 7th, 1866, and to an act of agreement passed before William J. Castell, notary public, the 18th May, 1867, by the mayor of New Orleans, of the first part, and by Christian Schneider and —— —— of the second part. Which said property is advertised to be sold under said writ by the United States marshal on the 25th day of April, 1878.

Now, your orator complains and says that the said John Klein has no right to issue the said writ of *pluries fieri facias* in said suit, or to cause the seizure, advertisement, and sale of the said property thereunder, for the following reasons and causes, to wit:

83 First. That the said John Klein has caused the judgment which was rendered in his favor in the said suit No. 7801 of the docket of this court to be registered in the office of the administrator of public accounts of the city of New Orleans, under and in accordance with the provisions of act No. 5 of the extra session of the legislature of Louisiana for the year 1870, and has availed himself of the benefit of the provisions of that act, and your orator says that said act No. 5 of 1870 expressly prohibits the issuance of any writ of *fieri facias* against the city of New Orleans upon any judgment so registered, and that said act is binding upon this court and upon the said John Klein, who has accepted all of its terms, conditions, and stipulations.

Secondly, your orator says that the said John Klein is without right or authority *or authority* to issue the said writ of *fieri facias* and to cause the seizure, advertisement, and sale of the said property thereunder, because he is not the owner of the said judgment, which has been duly transferred and assigned by the said John Klein on the books and in the office of the administrator of public accounts of the city of New Orleans to Messrs. Lessassier & Binder, to whom he transferred all of his right, title, and interest, and who are recognized by the city of New Orleans as the holders and owners of said judgment; all of which will more fully appear by reference to the original transfer, hereto annexed and marked Exhibit A,

which transfer is made in strict accordance with the ordinances of the city of New Orleans.

Your orator further complains and says that the writ issued in said suit and for which said property is seized and advertised to be sold is for the sum of eighty-nine thousand dollars, exclusive of interest and costs, and your orator says that said judgment has been reduced in amount, and that the balance due upon it is only fifty thousand dollars, with interest and costs.

Your orator files herewith as exhibits the notice of seizure and advertisement of sale of the said property under the said writ.

To the end, therefore, that the sale of the said property under said writ, which would cause your orator great and irreparable injury, should be stayed and prevented—

Your orator prays that the said John Klein, his attorneys or agents, may be restrained by an injunction issuing out of
84 this court from proceeding further in the advertisement and sale of the said property under the said writ. May it please your honors to grant unto your orator the writ of injunction, issuing out of and under the seal of this court, directed to the said John Klein, his agents or attorneys, commanding them and each of them from proceeding further in the advertisement and sale of the said property under the said writ or by virtue of the said judgment.

Your orator further prays that on a further hearing of this cause it may be decreed that the said writ of *pluries fieri facias* and the seizure made thereunder are illegal, null, and void, and that the injunction herein issued may be perpetuated, and that your orator may have generally such other and further relief as the nature of the case may require.

Therefore will your honors grant unto your orator the writ of subpœna issuing out of and under the seal of this honorable court, to be directed to said defendant, John Klein, commanding him by a certain day and under a certain penalty to appear before your honors in this court, and then and there answer the premises and abide the order and decree of the court.

(Signed) B. F. JONAS,
City Attorney, Sol'r for Complainant.

E. PILSBURY, *Mayor.*

Personally appeared Edward Pilsbury, mayor of the city of New Orleans, who makes oath that he has read the above bill and knows the contents thereof, and the same is true of his own knowledge.

(Signed) E. PILSBURY.

Sworn to and subscribed before me this 20th day of April, 1878.

(Signed) CHAS. S. RICE,
U. S. Commissioner, Dist. of La.

Order.

Let defendant show cause on Monday, April 22nd, '78, at 11 a. m., why an injunction should not issue as prayed for.

(Signed) EDWARD C. BILLINGS, *Judge.*

85 *Marshal's Return.*

Received April 20, 1878, by the U. S. marshal, and on the 22nd day of April, 1878, served a true copy of the within bill on John Klein, within named, by handing the same to him in person in the city of New Orleans.

(Signed) W. G. ELLIOTT,
D'y Marshal.

Subpœna in Chancery.

Issued April 20, 1878.

UNITED STATES OF AMERICA:

The President of the United States to the marshall for the district of Louisiana, Greeting:

You are hereby commanded to summon John Klein, a citizen of the State of Mississippi, to appear before the honorable the judges of the fifth judicial circuit of the United States of America at a circuit court to be holden on the first Monday of June, 1878, then and there to answer a bill in chancery filed against him, wherein The City of New Orleans is complainant and said John Klein defendant.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this 20th [SEAL.] day of April, in the year of our Lord one thousand eight hundred and seventy-eight, and the 102d year of American Independence.

(Signed) F. B. VINOT, *D'y Clerk.*

The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the United States circuit court on or before the first Monday of June, 1878; otherwise the bill may be taken *pro confesso.*

(Signed) F. B. VINOT, *D'y Clerk.*

86 *Marshal's Return.*

Received Apr. 20, 1878, by the U. S. marshal, and on the 22nd day of April, 1878, served a true copy of the within subpœna in chancery on John Klein, within named, by handing the same to him in person in the city of New Orleans.

(Signed) W. G. ELLIOTT,
D'y Marshal.

Continuance of Application for Injunction.

Extract from the Minutes, April Term, 1878.

NEW ORLEANS, MONDAY, *April* 22, 1878.

Court met pursuant to adjournment.
Present: Hon. E. C. Billings, district judge.

CITY OF NEW ORLEANS
vs.
JOHN KLEIN. } No. 8461.

By consent of counsel, the application for an injunction herein pending is continued until the 24th instant, at 11 a. m.

Hearing and Submission of Application for Injunction.

Extract from the Minutes, April Term, 1878.

NEW ORLEANS, WEDNESDAY, *April* 24, 1878.

Court met pursuant to adjournment.
Present: Hon. E. C. Billings, district judge.

CITY OF NEW ORLEANS
vs.
JOHN KLEIN. } No. 8461.

This cause came on to be heard on the complainant's application for an injunction, and, having been argued by B. F. Jonas for applicant and J. W. Thomas for defendant, the court took time to consider.

87 *Note of Evidence on the Application for Injunction.*

Filed April 24, 1878.

8461.

Pl'ff offered notice of seizure, affidavits.
Def't offered *fi. fa.* in suit 7801, U. S. C. C.
Pl'ff — affidavit of Jno. Klein.
" — affidavit of Lessassier.
" — cert. d'y cl'k.

Notice of Seizure.

Offered by plaintiffs and filed April 24, 1878.

NEW ORLEANS, *March 16th*, 1878.

In the United States Circuit Court for the District of Louisiana.

JOHN KLEIN
vs.
CITY OF NEW ORLEANS. } No. 7801.

United States marshal's office, district of Louisiana.

Fi. fa. against City of N. O.

To the City of New Orleans:

Take notice that I have seized and in three days from the service hereof shall proceed to advertise and sell, according to law, the following-described property, viz:

1. A certain lot of ground situated in the first district of this city, in the square bounded by Baronne, Poydras, Penn, and Perdido streets, designated by the lot number six on a plan deposited in the office of Selim Magner, late a notary public of this city, and designated as plan No. 105, measuring sixty-two feet nine inches front on Baronne street, seventy-four feet six inches on Penn street by a depth of sixty-eight feet four lines on the side line towards Poydras street, and seventy feet eight inches on the side line towards Perdido street, which is subject to, first, a lease to Henry Kern, as transferree of James A. Dryhoff and Luther Holsworth, by act before Selim Magner, late a notary public of this city, from the New Orleans and Carrollton Railroad Company, which lease expires on the — day of February, 1883.

2. To a building contract between Henry Kern and B. Fellman and the City of New Orleans, passed before H. C. Dibble, notary public, on the 25th day of March, 1868.

88 3. All the right, title, and interest of the City of New Orleans in and to the portion of ground described as follows, together with all the right, title, and interest of said city in and to the building and improvements on said portion of ground known as the National theatre: The lot of ground bounded by Baronne, Perdido, Carroll, and Poydras streets, measuring one hundred and fifty feet and six inches on Baronne street, fifty-seven feet and five inches on Perdido street, one hundred and fifty feet and four and three-eighths inches on Carroll street, and fifty-seven feet and five inches on the line nearest to Poydras street.

Which foregoing lot of ground is subject to the usufruct of the New Orleans and Carrollton Railroad Company until the 9th day of February, 1883.

Reference is made for more particulars to resolution No. 90, new series, passed by the common council and approved June 7th, 1866,

and to an act of agreement passed before Wm. J. Castell, notary public, on the 18th May, 1867, by the mayor of New Orleans, of the first part, and by Christian Schneider and others, of the second part, to pay and satisfy the writ of *pluries fi. fa.* issued in the above cause, say the sum of $89,000, exclusive of interest and costs.

(Signed) C. R. STEELE, *Deputy.*

Endorsed: Rec'v'd March 19, '78, and on the same day ref'd to city att'y thro' dep't of pub. acc'ts. (Signed) E. L. Bower, C. C.

Affidavit of J. G. Brown.

Offered by plaintiff and filed April 24, 1878.

Personally appeared J. G. Brown, administrator of public accounts of the city of New Orleans, who, being duly sworn, says that the judgment rendered in favor of John Klein against The City of New Orleans, in suit No. 7801 of the docket of the U. S circuit court, has been registered in his office under the provisions of act No. 5 of the extra session of 1870; that it has been reduced to the sum of fifty thousand dollars, and that the said judgment was transferred
89 and assigned by the said John Klein to Messrs. Lessassier & Binder on the 2nd February, 1878, which assignment is on record in my office and the original of which I now annex, and which is still in full force and effect.

(Signed) J. G. BROWN,
Adm'r Pub. Acc'ts.

Sworn to and subscribed before me, at New Orleans, this 22nd day of April, 1878.

[SEAL.] (Signed) J. PARIS CHILDRESS,
First Justice Peace, Parish Orleans, La.

Transfer or assignment—John Klein to Lesassier & Binder; judgment 187; transferred on the books of the department of public accounts Feb'y 2d, 1878—referred to in foregoing affidavit.

EXHIBIT A.

Transfer or Assignment.

NEW ORLEANS, *Feb'y 2d*, 1878.

For value received, I hereby transfer and assign to Lessassier & Binder or order all my right, title, and interest in and to the claim due me by the City of New Orleans, amounting to fifty thousand dollars, in conformity with ordinance No. 2066, administration series, as described below:

No. of Assignment.	No. of Ordinance.	Description of claims.	Amount.
		Balance due on judgment rendered in favor of John Klein *vs.* City of New Orleans, No. 7801, U. S. circuit court, which bears interest, at the rate of 6% per annum, from May 1, 1874, with costs, &c.....	$50,000

(Signed) JOHN KLEIN, *Transferree.*

Deposited in the department of public accounts for registration. 187.

90 Written across face in red ink: Registered in Judg't Book # 2, dep't pub. accounts, fo. 224.

Affidavit of John Klein.

Offered by def't and filed Ap'l 24, '78.

U. S. C. Court.

CITY OF NEW ORLEANS *vs.* JNO. KLEIN. } No. —. In Equity.

John Klein, being duly sworn, says that he is now and has always been the true and lawful owner of the judgment rendered in his favor against the City of New Orleans in the suit of himself *vs.* City of New Orleans, No. 7801 of the docket of the circuit court of the United States for the district of Louisiana, and that the only interest Messrs. Lessassier & Binder ever had in said judgment was that of pledgees.

He further says that in causing said judgment to be recorded in the office of administrator of public accounts of the city of New Orleans he did not intend to waive or abandon any remedy allowed him by law for its enforcement, and was advised by counsel that by thus recording it he would not forfeit any other remedy, and he appends hereto the opinion of Messrs. Hornor & Benedict as part hereof.

(Signed) JOHN KLEIN.

Sworn to and subscribed before me this 24th day of April, 1878.

(Signed) F. B. VINOT,
U. S. Comm'r.

Opinion of Messrs. Hornor & Benedict, Att'ys, Appended to Foregoing Affidavit.

NEW ORLEANS, 10 *July*, 1876.

Messrs. John Klein & Co., New Orleans.

GENTLEMEN: In answer to your letter of 6th July, we hand
91 you an opinion on the points inquired of.

1st. The right, title, and interest of the City of New Orleans in the ground rents of the property known as the "city commons" cannot be seized for the debts of the corporation.

N. O. & Carrollton R. R. Co. *vs.* Municipality No. One, 7 Ann., 148.

2d. The registration of your judgment against the City of New Orleans in accordance with the provisions of act No. 5 of the extra session of the La. legislature of 1870 will in no manner affect your right to seize and sell property belonging to the city under an execution issued out of the United States circuit court.

Dobbin *vs.* Allegheny County, 2 Pittsb., 120.

Yours respectfully,
(Signed) HORNOR & BENEDICT.

Affidavit of A. A. Lessassier.

Offered by def't and filed April 24, 1878.

U. S. C. Court.

CITY OF NEW ORLEANS
vs.
JOHN KLEIN. } No. —.

A. A. Lesassier, of the firm of Lessassier & Binder, being sworn, says that the only interest ever acquired and now held by the said firm in or to the judgment rendered by the circuit court of the United States for the district of Louisiana, in favor of John Klein against The City of New Orleans, in suit No. 7801 of the docket of said court, was and is that of pledgees.

He further says that said firm does not now nor ever did make any objection to the enforcement of said judgment by the said Klein in virtue of the writ of *fieri facias* issued in said cause, reserving to themselves all their rights as pledgees.

(Signed) A. A. LESSASSIER.

Sworn to and subscribed before me this 24th April, 1878.

(Signed) F. B. VINOT,
U. S. Comm'r.

Certificate of D'y Clerk.

Offered by def't and filed April 24, 1878.

92 United States Circuit Court for the Fifth Judicial Circuit and District of Louisiana.

CLERK'S OFFICE, NEW ORLEANS, *April 24th*, 1878.

I certify that it does not appear from the record of the suit of John Klein *vs.* City of New Orleans, No. 7801 of the docket of said court, that the said John Klein has transferred or assigned the judgment therein rendered to any third person.

Witness my hand and seal of said court this 24 April, 1878.

[SEAL.] (Signed) F. B. VINOT, *D'y Cl'k.*

Order Granting Preliminary Injunction.

Extract from the Minutes, April Term, 1878.

NEW ORLEANS, THURSDAY, *April* 25, 1878.

Court met pursuant to adjournment.

Present: Hon. E. C. Billings, district judge.

CITY OF NEW ORLEANS
vs.
JOHN KLEIN. } No. 8461.

This cause came on to be heard on the complain-t's application for an injunction *pendente lite* and was argued by counsel; on consideration whereof it is ordered that a preliminary injunction issue restraining the defendant as prayed for until the further order of the court.

Preliminary Injunction.

Issued 25 April, 1878.

UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Judicial Circuit and District of Louisiana.

CITY OF NEW ORLEANS
vs.
JOHN KLEIN. } No. 8461.

93 The President of the United States to John Klein, Greeting:

Whereas it has been represented unto us in our said circuit court, on the part of the City of New Orleans, in a bill in equity lately exhibited against you touching certain matters and things therein set forth; and whereas the Honorable Edward C. Billings, one of the judges of our said court, upon due consideration thereof, has granted and allowed an order enjoining you immediately and forth-

with to the full extent and effect as prayed for in said bill of complaint:

Now, therefore, in consideration of the premises and of the allegations in said bill contained, you, the said John Klein, your agents, attorneys, and servants, and each of you, are hereby commanded and strictly enjoined under the penalty of the law that you and each of you absolutely refrain and desist from proceeding further in the advertisement or sale of the property seized by the U. S. marshal for said district of Louisiana under the writ of *pluries fieri facias* issued from our said court, on the law side thereof, in the case No. 7801, entitled John Klein *vs.* The City of New Orleans, and advertised to be sold this day.

And that you, the said John Klein, your agents, attorneys, and servants, and each of you, remain so enjoined and inhibited until the further order of our said court in the premises.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 25th day of April, in the year of our Lord one thousand eight hundred and seventy-eight.

[SEAL] (Signed) F. B. VINOT, *D'y Clerk.*

Marshal's Return.

Received Apr. 26, 1878, by the U. S. marshal, and on the same day, month, and year served a true copy of the within injunction on John Klein, within named, by handing the same to him in person in the city of New Orleans.

(Signed) W. G. ELLIOTT,
D'y Marshal.

94 *Answer.*

Filed May 3rd, 1878.

To the honorable the judges of the circuit court of the United States for the fifth circuit and district of Louisiana:

John Klein, a citizen of the State of Mississippi, doing business in the city of New Orleans, and who is made defendant in the cause entitled "City of New Orleans *vs.* Jno. Klein," No. 8461 of the docket of this court, now comes and for answer to the bill of complaint therein filed on oath says:

First. It is true, as charged in the bill, that this respondent has caused a writ of *pluries fieri facias* to be issued from this honorable court in the suit No. 7801 on the law side of the docket, entitled John Klein *vs.* City of New Orleans, and has caused the marshal to seize and advertise for sale the property described in the bill.

Second. It is true that this respondent did cause the judgment rendered in his favor against said city in the aforesaid suit to be recorded or registered in the office of the administrator of public accounts of the city of New Orleans, in accordance with the provisions of act No. 5 of the extra session of the legislature of Louisiana for the year 1870, but he denies as a proposition of either

law or equity that in so doing he lost or forfeited any other remedy accorded him by law for the enforcement of said judgment, especially that of an ordinary execution.

Third. It is not true that this defendant is without right or authority to issue said writ, as he is still and ever has been the real, lawful, and *bona fide* owner of said judgment. He admits transfering and assigning on the books of the administrator of public accounts of the city of New Orleans said judgment to Messrs. Lessassier & Binder, but he says that said assignment was not intended as between the parties thereto to be a real sale, but, on the contrary, only a pledge, and he annexes as part hereof the affidavit of H. A. Lesassier filed herein on the trial of the rule to show cause. He denies as a proposition of law or equity that such an assignment divests him of the right to an execution, and avers that he is willing to give any guaranty required by the court to the said city against a second payment.

95 Fourth. He denies that the writ issued calls on its face for upwards of fifty thousand dollars, exclusive of interest, and he refers thereto and makes it a part hereof.

Therefore, in consideration of the premises, this defendant prays that on a hearing hereof it may be decreed that the temporary injunction issued herein be dissolved, and that a perpetual injunction be denied, and that he may have generally all such further relief in the premises as the nature of the case may require.

(Signed) JOHN KLEIN.

(Signed) THOMAS & LEWIS, *Solicitors.*

Personally came and appeared John Klein, who makes oath that he has read the above answer and knows the contents thereof, and that the same is true of his own knowledge.

(Signed) JOHN KLEIN.

Sworn to and subscribed before me on this 3rd day of May, 1878.

(Signed) CHAS. S. RICE,
U. S. Comm'r, Dist. of La.

Rule to Dissolve.

Entered May 3, 1878.

CITY OF NEW ORLEANS
vs.
JOHN KLEIN. } No. 8461. In Equity.

On motion of Thomas & Lewis, solicitors for the defendant, and on suggesting to the court the filing of an answer denying the equities of the bill of complaint—

It is ordered that complainant show cause on Tuesday, the 7 day of May, 1878, at 11 o'ck. a. m., why the interlocutory injunction herein allowed should not be dissolved.

Order: Continuance.

Extract from the Minutes, April Term, 1878.

96 NEW ORLEANS, TUESDAY, *May 7th*, 1878.

Court met pursuant to adjournment.
Present: Hon. E. C. Billings, district judge.

CITY OF NEW ORLEANS
vs.
JOHN KLEIN. } No. 8461.

By consent of counsel, the rule herein taken by defendant on 3d instant, returnable this day, is continued to Friday, 10 instant, at 10 a. m.

Order: Continuance.

Extract from Minutes, April Term, 1878.

NEW ORLEANS, FRIDAY, *May 10th*, 1878.

Court met pursuant to adjournment.
Present: Hon. E. C. Billings, district judge.

CITY OF NEW ORLEANS
vs.
JOHN KLEIN. } No. 8461.

This cause came on to be heard on the rule to dissolve the interlocutory injunction herein issued taken by defendant on 3rd instant—

When it was agreed by counsel that the cause be assigned for trial on the merits for Thursday, 30th instant, at 11 o'clock a. m., with leave in the meantime to take testimony.

Order: Case Transferred for Future Day.

Extract from the Minutes, April Term, 1878.

NEW ORLEANS, TUESDAY, *May 28th*, 1878.

Court met pursuant to adjournment.
Present: Hon. E. C. Billings, district judge.

CITY OF NEW ORLEANS
vs.
JOHN KLEIN. } 8461.

By consent of counsel, this cause, now fixed for the 30th instant, is transferred for hearing on June 4th, 1878, at 11 a. m.

97 *Hearing and Submission.*

Extract from the Minutes, April Term, 1878.

NEW ORLEANS, TUESDAY, *June 4th*, 1878.

Court met pursuant to adjournment.
Present: Hon. E. C. Billings, district judge.

CITY OF NEW ORLEANS
vs.
JOHN KLEIN. } No. 8461.

By consent of counsel, the cause is submitted on the bill, answer, and exhibits in the record.

Decree.

Entered and filed June 19, 1878.

CITY OF NEW ORLEANS
vs.
JOHN KLEIN. } No. 8461.

This cause came on to be heard at the present term and was argued by counsel.

On consideration thereof it is ordered, adjudged, and decreed that the interlocutory injunction issued be dissolved, an injunction refused, and complainant's bill of complaint dismissed with costs.

June 19, 1878.

(Signed) EDWARD C. BILLINGS, *Judge.*

Clerk's Certificate.

UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

CLERK'S OFFICE.

I, Edward R. Hunt, clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, do hereby certify that the foregoing 22 pages contain and form a full,
98 complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial, in the case of The City of New Orleans *vs.* John Klein, No. 8461 of the docket of the said court.

[SEAL.] Witness my hand and the seal of said court, at the city of New Orleans, this 22nd day of March, A. D. 1895.

E. R. HUNT, *Clerk.*

I, Charles Parlange, United States judge for the eastern district of Louisiana, do certify that Edward R. Hunt, whose name is signed to the above certificate as clerk of the circuit court of the United States

for the fifth circuit and eastern district of Louisiana, was at the time of signing said certificate and is now the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 22nd day of March, A. D. 1895.

(Signed) CHARLES PARLANGE, *Judge.*

(Endorsed:) 45347. Exhibit I, page 2. U. S. circuit court, eastern district of Louisiana. No. 8461. The City of New Orleans *vs.* John Klein. Copy of record No. 45347. C. D. C., Ph. of Orleans. Identified with bill of exceptions Ap'l 28, '95. (Signed) F. A. Monroe, judge. Filed April 4th, '95. (Signed) Onofre Triay, d'y cl'k.

Document Marked "K," Being Copy of Record, John Klein vs. City of New Orleans, in the United States Circuit Court.

UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana, New Orleans Division.

99 *Petition.*

Filed March 16, 1876.

To the honorable the circuit court of the United States, fifth circuit, district of Louisiana:

The petition of John Klein, a citizen and resident of the State of Mississippi, respectfully represents that the City of New Orleans, a municipal corporation of the State of Louisiana, within this judicial district, is justly and truly indebted to him in the sum of eighty-nine thousand dollars ($89,000), besides interest at six per cent. on $77.000 from May 1st, 1874; on $9,000 from January 1st, 1875, and on $3,000 from March 1st, 1875, until paid, for this, to wit, that he is the holder and owner, first, of forty-four bonds of one thousand dollars each, issued by the City of New Orleans to the New Orleans, Jackson & Great Northern Railroad Company under and by virtue of the provisions of an act of the legislature of Louisiana, No. 109, approved March 15th, 1854, and endorsed by the president and secretary of said company in blank, thirty-two of said bonds, to wit,

100 Nos. 111, 112, 113, 114, 127, 151, 154, 166, 324, 326, 397, 486, 487, 513, 523, 558, 668, 765, 768, 792, 969, 1433, 1449, 1450, 1453, 1478, *1478*, 1479, 1480, 1481, 1483, 1484, and 1556, redeemable May 1st, 1874; nine of said bonds, to wit, 1811, 1814, 1815, 1823, 1825, 1826, 1827, 1891, and 1894, redeemable January 1st, 1875, and three of said bonds, to wit, Nos. 1901, 1903, and 1894, redeemable March 1st, 1875, all letter B; and also forty-five bonds of one thousand dollars each, issued by the said City of New Orleans to the New Orleans, Opelousas & Great Western Railroad Company, under and by virtue of the provisions of an act of the legislature of

Louisiana, No. 108, approved March 15th, 1854, and endorsed by the president and secretary of said company in blank, said bonds, to wit, Nos. 85, 86, 87, 146, 158, 306, 451, 503, 504, 505, 506, 507, 509, 510, 511, 512, 515, 516, 517, 518, 523, 524, 525, 526, 527, 533, 631, 668, 676, 759, 764, 765, 766, 767, 794, 851, 852, 866, 868, 985, 1011, 1031, 1032, 1036, & 1120, all letter C, redeemable May 1st, 1874, all of said bonds having at their issue twenty years to run and all past due from the above dates respectively and bearing six per cent. interest from maturity, none of which interest or principal has been paid, although due and amicable demand has been made, nor has the city made suitable provision for payment of either principal or interest, as required by law, as will more fully appear from the said bonds, which will be produced on the trial of this case and which are annexed to and made part of this petition.

Wherefore, the premises considered, your petitioner prays that said City of New Orleans be duly cited, and that after all due proceedings he have judgment against the said City of New Orleans for eighty-nine thousand dollars ($89,000), with six per cent. interest on $77,000 from May 1st, 1874; on $9,000 from January 1st, 1875, and on $3,000 from March 1st, 1875, until paid; and, reserving the right to apply for an order to compel the said defendant to levy and collect a tax to pay said judgment, he further prays for costs and all general relief.

(Signed) J. Q. A. FELLOWS, *Att'y.*

EXHIBIT.

Filed with petition March 16, 1876.

List of City Bonds "Past Due" — Favor Railroads.

101	Nos. 111, 112, 113, 114, 1483, 1484, 1433, 513, 558, 969, 1556, 397, 486, 487, 1453, 1481, 1478, 1479, 1480, 1449, 1450, 523, 127, 324, 326, 668, 765, 768, 792, 151, 154, 166, letter B, favor N. O., Jackson & G't N. R'r'd, redeemable May 1st, 1874, (32) bonds, $1,000 each..	$32,000
	Nos. 1811, 1814, 1815, 1823, 1825, 1826, 1827, 1891, 1894, letter B, favor N. O., Jackson & G't N. R'r'd, redeemable January 1st, 1875, (9) bonds, $1,000 each.....	9,000
	Nos. 1901, 1903, 1984, letter B, favor N. O., Jackson & G't N. R'r'd, redeemable March 1st, 1875, (3) bonds, $1,000 each.....	3,000
	Nos. 631, 764, 794, 868, 985, 1011, 504, 506, 523, 524, 525, 526, 527, 866, 851, 852, 1120, 146, 503, 505, 535, 676, 759, 765, 766, 767, 516, 517, 518, 515, 306, 85, 86, 87, 158, 668, 451, 507, 509, 510, 511, 512, 1031, 1032, 1036, letter C, favor N. O., Opelousas & G't W. R'r'd, redeemable May 1st, 1874, *1874* (45) bonds, $1,000 each.....	45,000

Answer.

Filed April 20, 1876.

U. S. Circuit Court.

JOHN KLEIN
vs.
THE CITY OF NEW ORLEANS. } No. 7801.

Now comes the City of New Orleans and for answer to plaintiff's petition denies all and singular the allegations thereof.

Wherefore she prays to be hence dismissed with costs and for general relief.

(Signed) B. F. JONAS,
City Attorney.

102 *Judgment.*

Extract from the Judgment Book.

Circuit Court of the United States, Fifth Circuit and District of Louisiana, April Term, 1876.

NEW ORLEANS, TUESDAY, *May 2nd*, 1876.

Court met pursuant to adjournment.

Present: Hon. Edward C. Billings, district judge.

JOHN KLEIN
vs.
CITY OF NEW ORLEANS. } 7801.

This cause came up for trial—J. Q. A. Fellows for plaintiff, B. F. Jonas for defendant—

When, under the agreement on file, the jury was waived and the cause taken up before the court; and, after hearing the pleadings and the evidence, the plaintiff's case being fully made out, it is ordered, adjudged, and decreed that the plaintiff, John Klein, do recover from the City of New Orleans, a municipal corporation of the State of Louisiana, the sum of eighty-nine thousand dollars, with six per cent. interest per annum on seventy-seven thousand dollars from May 1st, 1874; on nine thousand dollars from 1st January, 1875, and on three thousand dollars from 1st March, 1875, till paid, and costs of suit.

Judgment rendered May 2d, 1876.

Judgment signed May 6th, 1876.

(Signed) EDWARD C. BILLINGS, *Judge.*

Judgment satisfied in part by payment of ten bonds ($1,000 each) & interest, Nos. 1901, 1903, & 1984, due March 1, '75, & Nos. 1811, 1894, 1825, 1827, 1826, 1823, & 1891, due Jan'y 1, '75, all letter B. N. O., April 14, '77.

(Signed) JOHN KLEIN.

Judgment satisfied in part by payment of twenty-nine bonds of $1,000 each and interest, Nos. 1814 & 1815, B, due Jan'y 1, '75, and Nos. 1032, 158, 87, 85, 86, 524, 507, 1011, 525, 527, 516, 517, 515, 146, 503, 504, 506, 505, 523, 985, 866, 518, 668, 764, 852, 765, & 851, C.
New Orleans, April 17th, 1877.
(Signed) JOHN KLEIN.

103 Judgment satisfied in part by payment of $3,700 July 29th, 1878.

Judgment satisfied in part by payment of $14,666.66 August 26th, 1878. (14,666.66.)

Judgment satisfied in part by payment of 324.50 Dec'r 17th, 1878.

Paid by U. S. marshal Aug't 3, '78, $1,856.90.
(Signed) JOHN KLEIN.

Paid by U. S. marshal Aug't 21, '78, 500.
(Signed) JOHN KLEIN.

Fi. Fa.

Issued March 15th, 1878.

U. S. Circuit Court, District of Louisiana.

JOHN KLEIN
vs.
CITY OF NEW ORLEANS. } No. 7801.

Circuit Court of the United States for the Fifth Circuit, Holding Sessions in and for the District of Louisiana.

The President of the United States to the marshal of the district of Louisiana or his lawful deputy, Greeting:

You are hereby commanded, as you have heretofore been, that you demand from the City of New Orleans the sum of eighty-nine thousand dollars, with six per cent. per annum interest on $77,000 from May 1st, 1874; on $9,000 from 1st January, 1875, and on $3,000 from 1st March, 1875, till paid, and costs of suit, subject to the following credits: $10,000 and interest, paid April 14th, 1877, by payment of bonds Nos. 1901, 1903, 1984, due March 1st, 1875, and Nos. 1811, 1894, 1825, 1827, 1826, 1823, and 1891, due January 1st, 1875, all letter "B," and $29,000.00, by payment of bonds Nos. 1814 and 1815, B, due January 1st, 1875, and Nos. 1032, 158, 87, 85, 86, 524, 507, 1011, 525, 527, 516, 517, 515, 146, 503, 504, 506, 505, 523, 985, 886, 518, 668, 764, 852, 765, and 851, C.

6

Clerk's costs... .... $83.00
Att'y's fee... .... 10.00

cash, which John Klein lately recovered by judgment of the circuit court of the United States for the fifth circuit and district of Louisiana, and if the same be not paid on demand, that then you cause

the same to be made out of the personal estate of the said City of New Orleans in your district, if sufficient personal estate can
104 be found therein; but if sufficient personal estate cannot be found in your district, that then you cause the same to be made out of the real estate of the said City of New Orleans in your district whereof —— — owner on the — day, into whose hands soever the same may have come, and that you have those moneys before our said court, to render to the said John Klein for the judgment aforesaid, on the 70th day from the date hereof, together with this writ.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 15th day of March,
[SEAL.] A. D. 1878, and 102nd year of the Independence of the United States.

(Signed) F. B. VINOT, *D'y Clerk.*

Marshal's Return Enjoined April 25, '78.

Received March 15th, 1878, by the U. S. marshal, and on the 16th day of March, 1878, seized and took into my possession the following- described property, viz:

1st. A certain lot of ground situated in the first district of this city, in the square bounded by Baronne, Poydras, Penn, and Perdido streets, designated by the lot No. 6 on a plan deposited in the office of Selim Magner late, a notary public of this city, and designated as plan No. 105, measuring 62 feet 9 inches front on Baronne street, 74 feet 6 inches on Penn St. by a depth of 68 feet 4 lines on the side line towards Poydras St. and 70 feet 8 inches on the side line towards Perdido street, which is subject to, 1st, a lease to Henry Kern, as transferee of James A. Doyhoff and Luther Holsworth, by act before Selim Magner, late a notary public of this city, from the New Orleans and Carrollton Railroad Company, which lease expires on the — day of February, 1883; 2nd, to a building contract between Henry Kern and B. Fellman and the City of New Orleans, passed before H. C. Dibble, notary public, on the 25th day of March, 1868.

2nd. All the right, title, and interest of the City of New
105 Orleans in and to the portion of ground described as follows, together with all the right, title, and interest of said city in and to the buildings and improvements on said portion of ground known as the National theatre:

The lot of ground bounded by Baronne, Perdido, Carroll, and Poydras —, measuring one hundred and fifty feet and six inches on Baronne St., fifty-seven feet and five inches on Perdido street, one hundred and fifty feet and four and three-eighths inches on Canal street, and fifty-seven feet and five inches on the line nearest to Poydras street, which foregoing lot of ground is subject to the usufruct of the New Orleans and Carrollton Railroad Company until the 9th day of February, 1883.

Reference is made for more particulars to resolution No. 90, new series, passed by the common council and approved June 7th, 1866,

and to an act of agreement passed before William J. Castell, notary public, on the 18th day of May, 1867, by the mayor of New Orleans, of the first part, and by Christian Schneider and others, of the second part.

And on the 16th day of March, 1878, recorded said seizure in the recorder of mortgages' office, parish of Orleans, La.; and on the 18th day of March, 1878, served a copy of the within notice of the seizure on the said city of New Orleans by handing the same to Edward Pilsbury, mayor of said city, in person in this city; and, after the legal delay has expired, the said above-described property was advertised for sale on the 24th day of March, 1878, in the following manner, to wit, by advertisement, composed in English, announcing the sale to take place, at the main entrance to the custom-house, on Canal street, in this city, on Thursday, the 25th day of April, at 12 o'clock m. Said advertisement was inserted and published in the New Orleans Times, a paper printed and published in the city of New Orleans, Louisiana, to wit, in the N. O. Times from the 24th day of March, 1878, to the day of sale, being full thirty days from the date of the first notice given in said newspaper. Said advertisement was inserted and published in said newspaper on the following days, to wit, March 24, 26, Ap'l 1, 9, 17, and 25, 1878; and on the 10 day of April, 1878, served a notice to appoint appraiser on The City of New Orleans, def't, by handing the same to Edward Pilsbury, mayor of said city, in person in this city; and on the
10th day of April, 1878, served notice to appoint appraiser-
106 on John Klein by handing the same to him in person in this city, and after having further complied with and performed all the additional previous legal requisites and after the appraisers, Mr. Michael Gernon, on behalf of plaintiff and Chas. G. Fletcher on behalf of defendant, having been duly sworn and being unable to agree on a valuation of the within-described property, when Jack Wharton, U. S. marshal, did then and there appoint Edward S. Wurzburger as umpire, who appraised the said property for the sum of seven thousand dollars and no more; and on the 25th day of April, 1878, I received an order from the U. S. circuit court, issued in the case of The City of New Orleans *vs.* John Klein, No. 8461, restraining said John Klein and others from proceeding any further in the seizure and sale until further orders from the said court; and on the 19th day of June, 1878, said injunction was set aside and the marshal was ordered to proceed and sell the property seized in this case, and in accordance to the within order I advertised said property for sale in the New Orleans Times on July 2nd, said sale to take place at the main entrance to the custom-house, on Canal street, on the 3rd day of August, 1878, at 12 o'clock. The delay allowed by law having expired before the day of sale, I hereby return the same, still maintaining my seizure, and requested a copy from the clerk for further proceedings.

N. O., July 12th, 1878.

(Signed) C. R. STEELE,
D'y Marshal.

CLERK'S OFFICE.

A true copy of the original on file.
(Signed) F. B. VINOT, *D'y Clerk.*

And said restraining order having been subsequently set aside, I advertised said property again for sale, to wit, on the 2nd day of July, 1878, by advertisements composed in English, announcing the sale to take place on the 3rd day of August, 1878, at 12 o'clock m., at the main entrance to the custom-house, on Canal street, in the city of New Orleans. Said advertisements were inserted and published in English in a paper in the city of New Orleans, to wit, in the New Orleans Times, from the second day of July, 1878, to the day of sale, being full thirty days from the date of the first notice given in said paper. Said advertisements were inserted and published in said newspaper on the 2nd, 10, 18, 25 July and 3rd
107 August, 1878, in English.

And having further complied with and performed all the additional previous legal requisites and after said property having been previously appraised, did expose the same at public sale at auction, as according to law, at the said main entrance to the custom-house, on Canal street, in the city of New Orleans, on the said 3rd day of August, 1878, at 12 o'clock m.

And at the time and place of sale I did announce in a loud and audible voice the terms and conditions of sale, and did produce the certificate of the recorder of mortgages for the parish of Orleans and city of New Orleans, delivered on the day of sale, and by which certificate it appears there are no special mortgages standing in the name of the city of New Orleans and recorded against the said property.

And at the time and place of sale I did read in a loud and audible voice the certificate of the register of conveyances in and for the parish of Orleans and city of New Orleans, delivered on the day of sale, and by which certificate it does not appear that the said city of New Orleans has alienated the said before-described property.

When J. B. Cotton, being the highest and last bidder, for account of Henry Kern, the property herein seized and firstly described was adjudicated to the said J. B. Cotton, for account of the said Henry Kern, for the price and sum of twenty-four hundred dollars ($2,400), payable — cash, and which amount came into my hands.

And when the property herein seized, secondly described, was not sold for want of bidders, at two-thirds of its appraised value, but was again advertised for sale, at twelve months' credit, according to law, on the 5th day of August, 1878, in the following manner, to wit: By advertisements composed in English announcing the sale to take place at the main entrance to the custom-house, on Canal street, in the city of New Orleans, on the 21st August, 1878, at 12 o'clock m.

Said advertisements were inserted and published in English in a paper in the city of New Orleans, to wit:

In the New Orleans Times, from the said 5th day of August, 1878, to the day of sale, being full fifteen days from the date of the first

notice given in said newspaper, & said advertisements were inserted and published in said newspaper on the 5, 15, and 21 Aug., 1878.

108 And on the said 21st August, 1878, at the hour of 12 o'clock m., did expose the same at public sale at auction, having first announced in a loud and audible voice the terms and conditions of sale, hereinafter expressed and specified, and having also produced the certificate of the recorder of mortgages in and for the parish of Orleans and city of New Orleans, delivered on the day of sale, and by which certificate it does appear that there are no special mortgages standing in the name of the city of New Orleans and recorded against the said property;

And at the time and place of sale I did read in a loud and audible voice the certificate of the register of conveyances in and for the parish of Orleans and city of New Orleans, delivered on the day of sale, and by which certificate it does not appear that the said city of New Orleans has alienated the said aforedescribed property—

When, J. W. Thomas being the highest and last bidder for account of Andrew C. Lewis, the said property secondly described as herein seized was adjudicated to the said J. W. Thomas for account of the said Andrew C. Lewis for the price and sum of five hundred dollars ($500), payable in the following terms and conditions: This being the second and last offering, this property will be sold on a credit of twelve months for whatever it will bring, the purchaser to furnish bond, with 6 % interest, with approved security, and special mortgage and lien on the property sold, the purchaser to deduct from the amount of his bid and pay in cash the amount of the marshal's and clerk's costs, say about one hundred dollars, as well as any taxes that may be *do* on the property sold.

And which was settled for as follows:

The said purchaser has furnished his bond, with J. W. Thomas as security, for the full sum of five hundred dollars, which bond is made in favor of the marshal and dated August 21, 1878, and made payable 12 months after date, and bears interest at the rate of 6 % per annum from date until paid.

Statement of Proceeds of Sale.

Cash received from cash sale		$2,400.00
Refunded plaintiff's attorneys amount of late marshal's costs previously paid by plaintiff, as appears by docket in the office and as per statement hereto annexed, and amounting to	$258.00	
Returned amount of ex-Marshals Pitkin's costs, amounting to (and paid him same)	8.00	
Retained amount of present marshal's costs and charges, amounting to	181.00	
Forward	447.00	$2,400.00

Amount forward	$447.00	
Refunded plaintiff's attorneys amount of clerk's costs previously paid by pl'fs	83.00	
P'd plaintiff's attorneys amount of their fees	10.00	
Paid clerk of court amount of his additional costs	3.10	
	$543.10	543.10
Balance paid to plaintiff's attorneys on account of plaintiff's claim to be credited on Aug. 3, '78, on this writ		$1,856.90
Transferred the bond herein to plaintiff and turned the same over to plaintiff's attorneys, and for which this writ is to be credited on the 21st August, 1878		500.00
		$2,356.90
Is entitled to, viz:		
$1,856.90 on the 3rd August, 1878.		
500.00 " " 21 " 1878.		
$2,356.90		$2,356.90

Returned Nov. 18, 1878.

ERNEST RICKER, *D'y Marshal.*

Marshal's Bill of Costs Attached to Return.

JOHN KLEIN
vs.
THE CITY OF NEW ORLEANS. } No. 7801.

1876.		Fees.	Disb.
Mar. 16.	Cit. & pet	4.00	
110			
Ap'l 21.	C. motion	2.00	
May 19.	*Fi. fa*	2.00	
23.	C. notice demand & seizure	2.00	
23.	Recording seizure	....	20.00
23.	Making copies	....	20.00
	Adv'ts sale	....	179.00
June 6.	Copy rule	2.00	
7.	C. rule and order	2.00	
17.	C. order	2.00	
20.	Fee cancelling seizures	1.00	
Aug. 11.	Cit. of appeal	2.00	
	Writ of error	2.00	
	Alias fi. fa.	2.00	
	Recording seizure	....	2.00
	Not. demand and seizure	2.00	
	Adv'ts sale	....	12.00
		25.00	233.00
			25.00
			258.00

Pitkin's Bill.

1877.				
Ap'l	26.	2 C. rule....	4.00	
May	5.	Not. trial....	2.00	
June	12.	Not. trial....	2.00	
			8.00	$8.00

Marshal Wharton's Bill of Costs.

JOHN KLEIN
vs.
THE CITY OF NEW ORLEANS.

1878.				
M'ch	15.	*Pluries fi. fa*.....	2.00	
	16.	Record'g seizure	....	$1.00
		34 not. seizure...	3.00	
	23.	Process verbal of adv'ts	1.00	
		Printing, Times.....	....	35.00
April	10.	2 not. of appraisers.....	1.00	
111		Swearing of appraisers...	1.00	
		Appr's & umpire..	....	30.00
		Process verbal appr's.....	2.00	
	25.	Certificate of conveyance.....	....	2.00
		Do. recorder...	....	5.00
July	2.	Process verbal adv't.	1 50	
		Printing (Times).....	....	35.00
		Copy of writ....	1.50	
Aug.	3.	Mortgage certif.....	....	1.00
		Conveyance do.....	....	1.00
		Commr. on sale....	22.00	
	5.	Procès verbal adv't..... ...	1.50	
		Printing 12 M.....	....	18.00
	21.	Mortgage certif..... ..	....	1.00
		Conveyance do.....	....	1.00
		12-mos. bond.....	2.00	
		Recording bond	....	1.00
		Return on writ..... ..	1.50	
		Commr. on sale.....	10.00	
			50.00	131.00
				50.00
				$181.00

Motion for Permission to Withdraw Bonds.

Entered and filed 2nd May, 1885.

United States Circuit Court, Eastern District of Louisiana.

JOHN KLEIN; CHAS. T. HOWARD, Sub'd, *vs.* CITY OF NEW ORLEANS. } No. 7801.

On motion of Joseph P. Hornor and F. W. Baker, att'ys of Charles T. Howard, subrogated to the rights of the plaintiff herein, and on suggesting to the court the judgment rendered in the case of Charles T. Howard *vs.* City of New Orleans, No. 11010 of the docket of this court—

It is ordered by the court that said Charles T. Howard have leave to withdraw the thirty-three bonds of $1,000.00 each of the city of New Orleans on file in this case.

112 *Clerk's Certificate.*

UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

CLERK'S OFFICE.

I, Edward R. Hunt, clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, do hereby certify that the foregoing 16 pages contain and form a full, complete, true, and perfect transcript of the petition, exhibit, answer, judgment, *fi. fa.*, and motion for permission to withdraw bonds in the case of John Klein *vs.* The City of New Orleans, No. 7801 of the docket of the said court.

[SEAL.] Witness my hand and the seal of said court, at the city of New Orleans, this 3rd day of April, A. D. 1895.

(Signed) E. R. HUNT, *Clerk.*

Judge's Certificate.

I, Charles Parlange, United States judge for the eastern district of Louisiana, do certify that Edward R. Hunt, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was at the time of signing said certificate and is now the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 3rd day of April, A. D. 1895.

(Signed) CHARLES PARLANGE, *Judge.*

(Endorsed:) U. S. circuit court, eastern district of Louisiana. No. 7801. "K." John Klein *vs.* City of New Orleans. Transcript of petition, exhibit, answers, judgment, *fi. fa.*, & motion for permission to withdraw bonds. Cost of copy, $7.50. No. 45347.
113 C. D. C., Ph. of Orleans. Identified with bill of exceptions April 28, '95. (Signed) F. A. Monroe, judge. Filed Ap'l 4th, '95. (Signed) Onofre Triay, d'y cl'k.

119 I, the undersigned, custodian of notarial records for the parish of Orleans, State of Louisiana, hereby certify the foregoing to be a true copy of an original plan made by Chas. F. Zimpel, deputy city surveyor, on the 4th of May, 1833, which is annexed to an act passed before Felix De Armas, notary public, deceased, dated 18th July, 1833, which said act is now in my possession as custodian aforesaid.

New Orleans, March 12th, 1878.

(Signed) J. COFFEY,

[SEAL.] *Custodian of Notarial Records.*

Endorsement appearing on back of plan: Plan of 1833. Zimpel. Copy. 12 March, 1878. Sketch of plan. Def't "K." (Signed) J. F. Coffey, custodian of notarial records. No. 45347. Civil dist. court. City of N. O. *vs.* P. Werlein. Offered in evidence by def'd't. Filed Dec. 17th, 1896. (Signed) Jeo Garidel, d'y cl'k.

120 *Document Marked Def't "G," Being Letter of G. Guilhou to Felix de Armas, Notary of the Corporation of New Orleans, with Two Resolutions.*

MAIRIE DE LA NOUVELLE ORLÉANS.

Mr. Félix de Armas.

MONSIEUR: J'ai l'avantage de vous remettre à joint la copie de deux Résolutions du Conseil de Ville, en dâte du 29 Mai 1833, relatives à la Compagnie du Chemin à Coulisse de Carrolton et à certains arrangements entre la Corporation et la dite Compagnie.

Je suis respectuesement, Monsieur,

Votre tres h^le^ & ob't ser'nt,

(Signé) J. GUILHOU.

CONSEIL DE VILLE, 29 *Mai*, 1833.

Résolu que le Maire est et demuire autorisé à passér avec la Compagnie du Chemin à Coulisse de Carrolton les actes nécessaires afin de mettre la Corporation en possession,

1°. De la portion de têrre sur la quelle doit se prolonger la Rue Baronne au trâvers de l'ancien Bassin Gravier, maintenant la propriété de la dite Compagnie.

2°. D'une autre portion de têrre comprise entre les points A, B, C, D, figuré sur le plan dréssé par C. F. Zimple en date du 4 Mai Mil huit cent trente trois et formant le prolongement de la rue Poydras.

Résolu: de plus que le maire est également autorisé à accorder à la dite Compagnie du Chemin—à Coulisse de Carrolton, pendant le terms de la durée de sa Charte la jouissance des portions de têrre comprises entre les lettres, C, F, G, H, I, K, L, M, N indiquées au Plan sus dit à la charge par la dite Compagnie de les faire immédiatement remblayer et d'en transferer de nouveau la jouissance à la Corporation dans le cas ou le Chemin à coulisse ne serait pas établie

et mis en operation dans les trois années qui suivront la passation de la présente résolution.

(Signed) N. MORSE, *Recorder.*

121 Approuvée le 1st Juin 1833.

(Signé) D. PRIEUR, *Maire.*

Pour copie conforme.

(Signed) J. GUILHOU.

"At a meeting of the board of directors of the New Orleans and Carrollton Railroad Company held the 10th June, 1833, it was resolved,

That the president be authorized to sign all the necessary deeds in order to settle with the city council.

I hereby certify the above to be a true copy of the original.

(Signed) L. F. GÉNÉRÉS,
Secr'y N. O. & C. R. R. Co.

New Orleans, June 17, 1833.

I, the undersigned, custodian of notarial records for the parish of Orleans, State of Louisiana, do hereby certify the above & foregoing to be true & correct copies of the several documents annexed to an original act passed before Félix de Armas, notary public, deceased, of this city, on the eighteenth day of July, 1833.

Which said act is now in my possession as custodian aforesaid.

New Orleans, Febr'y 5, 1879.

(Signed) J. F. COFFEY,
[SEAL.] "*Custodian Notarial Records.*"

(Endorsed:) No. 45347. Civil dist. court. City of N. O. *vs.* P. Werlein. Offered in evidence by def'd't. Filed Dec. 17th, 1896. (Signed) Joe Garidel, d'y cl'k. Def't "G."

Translation of the Foregoing Document Marked Def't "G."

MAYORALTY OF NEW ORLEANS.

Mr. Felix de Armas, notary of the corporation.

SIR: I have the honor to transmit herein a copy of the two resolutions of the city council, dated May 29th, 1833, relative to the New Orleans and Carrollton Railroad Company, and certain agreements between the corporation and the said company.

I am, respectfully, sir,

122 Your very humble and obedient servant,

(Signed) J. GUILHOU.

CITY COUNCIL, *May 29th*, 1833.

Resolved: That the mayor be and he is hereby authorized to pass for the New Orleans and Carrollton Railroad Company the necessary acts to put the corporation in possession: first, of the portion of ground which will be the prolongation of Baronne street across the old Gravier basin now the property of the said company.

Second: Of another portion of ground comprised within the points A, B, C, D, figured on the plan made by C. F. Zimple dated the fourth of May, 1833, and forming the prolongation of Poydras street.

Resolved further: That the mayor is also authorized to grant to the Carrollton Railroad Company, during the term of the duration of its charter the use of the portion of ground comprised between the letters C, F, G, H, K, L, M, N which figure upon the above plan, on the condition to cause them to be filled and to transfer anew the use thereof to the corporation in case the railroad should not be established and put in operation within the three years which will follow the adoption of the present resolution.

(Signed) N. MORSE, *Recorder.*

Approved the first of June, 1833.

(Signed) D. PRIEUR, *Mayor.*

A true copy.

(Signed) J. GUILHOU.

Document Marked Defendant "F," Being Certificate of Pilié and Seaton Concerning National Theatre.

NEW ORLEANS, *November 5th*, 1866.

Messrs. Schneider & Suberbier.

GENTLEMEN: We, the undersigned, members of the commission called by you to examine the construction of the New National theatre on the corner of Baronne and Perdido streets, submit the following report and suggestions:

123 After having personally inspected the building we unhesitatingly decide that it is strong and substantial in design, material, and construction.

As this building will often contain a large assemblage of persons, we would suggest to you the importance of a large and easy exit for the audience in case of a sudden alarm from any cause whatsoever.

The present entrance stairway being quite inadequate for that purpose, we would recommend its removal and the construction of one of double the capacity and of a more easy grade.

Very respectfully, gentlemen, your obedient servant-,

(Signed) LOUIS H. PILIÉ,
City Surveyor.

Do. HENRY HOWARD,
Architect.

Do. ROBERT SEATON,
Architect.

Do. JOSHUA NEEBLES,
Builder.

Do. J. A. D'HÉMECOURT,
Deputy City Surveyor.

(Endorsed:) Concerning National theatre. Certificate of Pilié and Seaton. Def't "F." No. 45347. Civil dist. court. City of N. O. *vs.* P. Werlein. Offered in evidence by def't. Filed Dec. 17th, 1896. (Signed) Joe Garidel, d'y cl'k.

Certificate of State Tax Collector.

Fee, one dollar. Paid. For E. T. Merrick.

OFFICE OF STATE TAX COLLECTOR,
FIRST DISTRICT, PARISH OF ORLEANS,
No. 433 (OLD No. 81) CARONDELET STREET,
NEW ORLEANS, LA., *April* 8, 1897.

No. 3059. Certificate of State taxes.

This is to certify that the State taxes on property described below appear as follows on the rolls in this office, as per a research made this day, viz., on lot No. 1, in square No. 4/231, first district, bounded by Perdido, Carroll, Baronne, Poydras streets:

124

Year.		Name.	Assessment.	Remarks.
			Dollars.	
1896	State and Orleans levee district taxes.	Peter & Philip Werlein.....	15,000	Paid M'ch 24, '97.
1895		" " "	15,000	Paid Jan'y 28, '96.
1894		" " "	15,000	Paid Dec. 28, '94.
1893		" " "	10,000	Paid Dec. 20, '93.
1892		" " "	10,000	Paid Dec. 28, '92.
1891		" " "	10,000	Paid Dec. 31, '91.
1890		" " "	10,000	Paid Dec. 4, '90.
1889		" " "	7,000	Paid Dec. 17, '89.
1888		" " "	7,000	Paid Dec. 28, '88.
1887		" " "	25,000	Paid Dec. 31, '87.
1886		Peter & heirs of Philip Werlein...	25,000	Paid Dec. 14, '86.
1885		Philip & Peter Werlein, 4.....	25,000	Paid.
1884		" " "	23,000	Paid.
1883		Philip & Peter P. Werlein, ".....	23,000	Paid.
1882		" " "	23,000	Paid.
1881		Schneider & Zuberbier	20,000	Paid.
1880		" "	20,000	Paid.
1878		" " 4.....	30,000	Paid.
1877		" " "	30,000	Paid.
1876		" " ½.....	20,000	Paid.
1875	As per the delinquent rolls on file in this office.	" "	Do.	Not appear.
1874		" "	"	" "
1873		" "	"	" "
1872		" "	"	" "
Special one-mill tax do.		Schneider & Zuberbier, 4.....	50,000	Due.
1871		" "	Do.	Not appear.
1870		" "	"	" "
1869		" "	"	" "

[SEAL.]

(Signed) C. HARRISON PARKER,
State Tax Collector First District, Parish of Orleans,
Per C. E. LETTEN, *Deputy.*

(Endorsed:) No. 45347. Civil district court. City of New Orleans *vs.* Philip Werlein. Offered in evidence by def'd't. Filed April 9th, 1897. (Signed) Joe Garidel, d'y cl'k.

125 *City Tax Research.*

No. 2820. City taxes. E. T. Merrick.

Fee, $1.00. Archinard.

COMPTROLLER'S OFFICE,
CITY OF NEW ORLEANS, LA., *April 8th*, 1897.

By research made this day on real estate in square No. 231, 4th assessment district, bounded by Perdido, Baronne, Carroll, and Poydras, lot 1, $57.^5$ x $150.^6$, the city taxes appear as follows:

Year.	No. bill.	Name.	Due.	Tax.
1896..	324	Peter and Philip Werlein.....	.....	300.00
1895..	535	"	$300.00	Paid.
1894..	533	"	300.00	"
1893..	990	"	200.00	"
1892..	756	"	202.00	"
1891..	527	"	202.00	"
1890..	493	"	202.00	"
1889..	831	"	141.40	"
1888..	1139	"	141.40	"
1887..	1190	" paid $325, balance due..	.....	180.00
1886..	1189	Peter and heirs of Philip Werlein.....	$505.00	Paid.
1885..	1195	Philip and Peter Werlein	635.00	"
1884..	1153	"	460.00	"
1883..	1108	"	460.00	"
1882..	1093	Schneider and Zuberbier.....	635.00	"
1881..	181	"	356.80	"
1880..	154	"	364.20	"
1879..	163	"	450.00	"
1878..	166	"	450.00	"
1877..	173	"	300.00	"
1876..	176	"	600.00	"
1875..	157	"	1,000.00	"
1874..	178	"	1,000.00	"
1873..	201	"	1,500.00	"
1871..	36135	"	1,512.50	"
1870..	30637	"	1,000.00	"

126 The foregoing is a true and correct statement as taken from tax records on file in this office.

P. ALPH. RABOUIN,
Comptroller,

(Signed) Per GEO. GARROT.

(Endorsed:) No. 45347. Civil district court. City of New Orleans *vs.* Philip Werlein. Offered in evidence by def'd't. Filed April 9th, 1897. (Signed) Joe Garidel, d'y cl'k.

Document "No. 1," Map or Plan.

127 *Document Marked No. 2, Being Extracts of Act of Sale by J. Gravier to Various Parties and Etienne Carraby to Marianne Hinard.*

Par acte du cinq Juin mil-huit cent cinq au rapport de Pierre Pedesclaux alors Notaire, Jean Gravier pour assurer le paiement de vingt actions dans le capital de la Compagnie D'assurance de la Nouvelle Orléans, à hypotheque en faveur de la dite Compagnie cent quatre vingt quatre terrains situés au faubourg St. Marrie et compris dans les deux plans No. Un et deux par M.M. Barthelemy Lafon et Hilaire Boutté lesquels plans ont été signés *Ne Varietur* et remis à la dite compagnie D'assurance lesquels terrains sont situés et numérotés comme suit:

Dans la rue de la briqueterie sous les numero 88, 89, 90, 91, 101, 102, 103, 104, 105, 106, 109, 110, 121; les terrains situés dans la rue Salcédo sous les numero 49, 50, 51, 52, 53, 55, 92, 93, 94, 95, 96, 97, 98, 99, 100, 112, 113, 116, 117. less terrains situés dans les rues Julie, Giro, Hevia entre les rues Salcédo et Calalou sous les numeros, 47, 48, 54, 56, 63, 64, 65, 40, 41, 42, 43, 44, 45, 46, 58, 59, 60, 61, 62, 5, 6, 134, 112, 20, 21, 22, 23. Les terrains situés rue Du Cirque sous les numero 2, 3, 133, 7, 8, 9, 16, 17, 18, 19. Divers terrains situés sur le bord du canal et place Gravier rue Fortier sous les numero 135, 136, 137, 138, 139, 140, 141, 142, 143, 144. Tous les les terrains situés sur les rues St. Paul sous les numero 3, 5, 7, 9, 11, 19, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, 35, 37, 39. Les terrains situés sur la rue St. Pierre sous les numeros 4, 6, 8, 10, 12, 14, 16, 18, 20, 22, 26, 28, 30, 32, 34, 36, 38, 40, 41, 43, 45, 47, 49, 51, 53, 55, 57, 59, 61, 63, 65, 67, 69, 71, 73, 75, 79, 77, les terrains situés sur la rue St. Jean numérotes 42, 44, 46, 48, 50, 52, 54, 56, 58, 60, 62, 64, 66, 68, 70, 72, 74, 76, 78, 80, 81, 83, 85, 87, 89, 91, 93, 95, 97, 99, 101, 103, 105, et finalement les terrains sur la rue du Cirque sous les numero 82, 84, 86, 88, 90, 92, 94, 96, 98, 100, 102, 104, et 106.

Laquelle hypothèque à été acceptée par Mr. Thomas L. Harman president de la dite Compagnie.

Par acte au rapport de Pierre Pedesclaux alors notaire du dix neuf Septembre mil-huit cent huit, Jean Gravier à vendu à Jacques Moquin un morceau de têrre situé un faubourg S[te] Marie composé de cent trente pieds deface à la rue Fortier, cent quatre vingt
128 dix-huit pieds à la rue du Canal deux cent soixante seize pieds du coté joignant au venduer et quartre vingt dix huit pieds deface à la rue Pigeonnier.

Par act du vingt six Octobre mil-huit cent huit devant Pierre Pedesclaux alors Notaire Jacques Moquin à vendu à Mr. Etienne Carraby un morceau de têrre situé au faubourg S[te] Marie ayant cent trente pieds de face à la rue Fortier, cent quartre vingt dix huit pieds à la rue du Canal deux cent soixante seize pieds du coté joignant du coté de Mr. Jean Gravier et quatre vingt dix huit pieds de face à la rue du Pigeonnier

Par acte du onze Septembre mil-huit onze, devant Pierre Pedesclaux alors notaire, Mr. Etienne Carraby à vendu à D[lle] Marianne

Hinard un terrain situé au faubourg Ste Marie rue des Pigeonniers ayant soixante huit pieds de face, cent vingt six pieds attenant au terrain du sieur Perilliat, soixante huit pieds attenant au vendeur et cent quatorze attenant au sieur Jean Gravier et formant une surface de huit mille cent soixante pieds

Par acte du treize avril mil-huit-cent-vingt deux devant Philippe Pedesclaux alors notaire Etienne Carraby à vendu à Jean Gleize tout l'emplacement que le sieur vendeur à acheté du Sieur Jacques Moquin par acte devant Pierre Pedesclaux le vingt six October mil-huit-cent-huit lequel emplacement est situé au faubourg Ste Marie et mesure cent trente pieds deface à la rue Fortier, cent quatre vingt dix huit-huit pieds à la rue du Canal, Deux cent soixante seize pieds du coté attenant à la propriété du Sieur Gravier, et quatre vingt dix-huit pieds face à la rue Pigeonnier à l'exception néanmoins du terrain vendu à la dite Marianne Hinard le 11 September 1811.

Por Escritura otorgada ante Pedro Pedesclaux escrivana publico sufeiha el treinta y uno de Ju'io de mil ochocientos y dos años Juan Gravier vendio a los Señores Cochran y Rhea socios de este comercio y vecindad siete terrinos situados en el barrio de San Luis extramuros de esta ciudad, numerados en el plana que acompaña la escritura desde el numero ciento guarente y nueve, al cineto cinquenta y cinco con los près de frente y fondo que demarea.

Par acte du seize Dècember mil-huit-cent-trois devant Pierre Pedesclaux Jean Gravier à vendu à Mr. Arnault Dugay, une piece de têrre formant un ilet entier situé faubourg Sainte Marie ouvrant sur la rue Evia et sur celle Poydras de trois cent vingt pieds et sur
129 celle Salcédo et de la Briqueterie de deux cent soixante pieds de dit islet quarré et joignant de toutes parts aux rues deja cotées. Le dit quarré ou islet contenant onze terrains designés par le plan qu'il nous à presenté et à lui rendu sous les numero trente trois, trente quatre, trente cinq, trente six, trente Sept, trente huit, trente neuf, quarante, quarante deux, quarante trois et quarante quatre sur le plan.

Par acte du vingt et un février mil-huit-cent-Sept devant Pierre Pedesclaux, Jean Gravier à vendu à Mr. Alexandre Garnot Delhorme douze terrains situés au faubourg Ste Marie sous les numero quatre vingt un, quatre vingt deux, quatre vingt trois, quatre vingt quatre, quatre, vingt cinq, quatre vingt six, quatre vingt Sept, quatre vingt huit, quatre vingt neuf, quatre vingt dix, quatre vingt onze, et quatre vingt douze ayant trois cent soixante et onze pieds deface à la rue St. Jean, deux cent quarante pieds à la rue Pigeonnier, trois cent cinquante quatre pieds à la rue du cirque et deux cent quarante pieds à la rue du Canal

Par acte du vingt trois Janvier mil-huit cent onze devant Pierre Pedesclaux alors notaire, Jean Gravier à vendu à Jacques Freret deux morceau du têrre situés au faubourg Ste Marie ayant l'un cent quatre vingt trois pieds deface à la rue de la briqueterie, cent quatre vingt dix à la rue de Pigeonnier, cent vingt du coté joignant à Mr. Coquerank et faisant face à une rue de trente six pieds at l'autre ayant deux cent vingt cinq pieds à la rue Salcédo quatre vingt quatorze à la rue du Pigeonnier cent soixante et quinze du coté

joignant à Mr. Coquerank et faisant aussi face à la dite rue de trente six pieds.

Je, Louis T. Caire notaire public dans et pour la ville et paroisse de la Nouvelle Orléans dûment commissionné et ossermente certifié que ce qui précéde à été fidélement extrait des différens actes y mentionnés passés devant Pierre Pedesclaux, et Philippe Pedesclaux nos predecesseurs, et maintenant dans mon étude et à ma garde en foi de quoi j'ai signé le present et y ai apposé le sceau de mon office à la Nouvelle Orléans le trois Mars mil-huit cent quarante.

(Signed) LOUIS T. CAIRE, *Not. Pub.*

(Endorsed:) No. 2. Neuf extraits d'actes de vente par
130 J. Gravier à divers et Etienne Carraby à Marianne Hinard. No. 10. 15983. Filed 18 June, 1845. (Signed) T. Gilmore, d'y cl'k. M. Filed March 11th, 1840. (Signed) James Sample, d'y cl. 4093. Supreme court. Filed Nov'ber 24th, 1840. (Signed) A. Couvillier, cl'k. No. 47374. Civil district court. City of N. O. *vs.* P. Werlein. Offered in evidence by pl'ff. Filed Dec. 19th, 1896. (Signed) Joe Garidel, d'y cl'k. Transferred from the 1st judicial district court. No. 39660. Filed July 19th, 1893. (Signed) Onofré Triay, deputy clerk.

Translation of the Above.

By act of the 5th of June, 1805, in the office of Pierre Pedesclaux then notary, Jean Gravier to secure the payment of twenty shares in the capital of the New Orleans Insurance Company has mortgaged in favor of said company one hundred and eighty-four lots situated in Faubourg St. Mary and comprised in the two plans Nos. 1 and 2 by Messrs. Batthelemy, Lafon and Hilaire Boutte, which said plans have been signed "*ne varietur*" and delivered to the said insurance company.

Which said lots are situated and numbered as follows: In Briqueterie street by the numbers, 88, 89, 90 and 91, 101, 102, 103, 104, 105, 106, 109, 110, 121;

The lots situated on Salcedo street by the numbers 49, 50, 51, 52, 53, 55, 92, 93, 94, 95, 96, 97, 98, 99, 100, 112, 113, 116, 117;

The lots situated on Julia, Girod and Hevia streets between Salcedo and Callalu streets by the numbers 47, 48, 54, 56, 63, 64, 65, 40, 41, 42, 43, 44, 45, 46, 58, 59, 60, 61, 62, 5, 6, 134, 112, 20, 21, 22, 23.

The lots situated on Circus street by the numbers 2, 3, 133, 7, 8, 9, 16, 17, 18, 19;

Various lots situated on the bank of the canal and Gravier square Fortier street, by the numbers, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144.

All the lots situated on St. Paul streets by the numbers 3, 5, 7, 9, 11, 19, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, 35, 37, 39.

The lots situated on St. Peter street by the Nos. 4, 6, 8, 10, 12, 14, 16, 18, 20, 22, 26, 28, 30, 32, 34, 36, 38, 40, 41, 43, 45, 47, 49, 51, 53, 55, 57, 59, 61, 63, 65, 67, 69, 71, 73, 75, 79, 77.

The lots situated on St. John street by the Nos. 42, 44, 46, 48, 50, 52, 54, 56, 58, 60, 62, 64, 66, 68, 70, 72, 74, 76, 78, 80, 81, 83, 85, 87, 89, 91, 93, 95, 97, 99, 101, 103, 105, and finally the lots situated
131 on Circus streets by the Nos. 82, 84, 86, 88, 90, 92, 94, 96, 98, 100, 102, 104 and 106.

Which said mortgage has been accepted by Mr. Thomas L. Harmon president of the said company.

By act before Pierre Pedesclaux then notary dated September 19th, 1808 Jean Gravier has sold to Jacques Moquin, a portion of ground situated in Faubourg St. Mary, composed of 130 feet front on Fortier street, 198 feet on Canal street, 276 feet on the side adjoining the vendor and 98 feet front on Pigeonnier street.

By act of the 26th of October 1808, before Pierre Pedesclaux then notary, Jacques Moquin has conveyed to Mr. Etienne Carraby, a portion of ground situated in Faubourg St. Mary having one hundred and thirty feet front on Fortier street, 198 feet on Canal street, 276 feet on the side adjoining the side of Mr. Jean Gravier and ninety-eight feet front on Pigeonnier street.

By act of the 11th of September, 1811 before Pierre Pedesclaux then notary, Mr. Etienne Carraby has sold to Miss Marianne Hinard a lot situated in Fau/ourg St Mary on Pigeonnier street having 68 feet front by 126 feet adjoining the lots of Mr. Perilliat, 68 feet adjoining the vendor, and 114 feet adjoining Mr. Jean Gravier and forming a surface of 8,160 feet.

By act of the 13 of April 1822 before Phillippe Pedesclaux, then notary, Etienne Carraby has sold to Jean Gleize, all that portion of ground which the vendor had acquired from Mr. Jacques Moquin by act before Pierre Pedesclaux dated the 26th of October 1808, which said portion of ground is situated in Faubourg St. Mary, and measures 130 feet front on Fortier street, 198 feet on Canal street, 276 feet adjoining the property of Mr. Gravier and 98 feet front on Pigeonnier street, with the exception, however, of the lot sold to the said Marianne Hinard, the 11th of September, 1811.

By act passed before Pierre Pedesclaux, a notary public under date of the 31st of July, 1802, Jean Gravier sold to Messrs. Cochrane and Rhea, partners of this commercial city and locality, seven lots situated in the district of St. Louis, outside of the walls of this city, numbered in the plan which accompanies said act from the numbers 149 to 155 with a front and depth in feet which appears by said plan.

By act of the 16th of December, 1803, before Pierre Pedesclaux, Jean Gravier has sold to Mr. Arnault Dugay, a portion of
132 ground forming a whole square situated in Faubourg St. Mary opening Hevia street and on Poydras street by 320 feet, and on Salcedo and Briqueterie street- 260 feet; the said square is a square and adjoining in every part with the street above named. The said square or block containing 11 lots designated by the plan which he has produced to us and to him returned by the numbers 33, 34, 35, 36, 37, 38, 39, 40, 42, 43 and 44 on the plan.

By act of the 21st of February, 1807, before Pierre Pedesclaux, Jean Gravier has sold to Mr. Alexander Garnot Delhorne, twelve

lots situated in Faubourg St. Mary, numbers 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91 and 92 having 371 feet front on St. John street, 240 feet on Pigeonnier street, 354 feet on Circus street and 240 feet on Canal street.

By act of the 23rd of January 1811, before Pierre Pedesclaux, then notary, Jean Gravier has sold to Jacques Freret two portions of ground situated in Faubourg St. Mary having one of them, one hundred and eighty feet front on Briqueterie street, one hundred and ninety feet on Pigeonnier street, one hundred and twenty feet on the side adjoining Mr. Coguerank, and fronting on a street of thirty-six feet, and the other having two hundred and twenty-five feet on Salcedo, ninety-four feet on Pigeonnier street, one hundred and seventy-five on the side adjoining Mr. Coquerank, and also fronting on said street, thirty-six feet.

I, Louis T. Caire, a notary public in and for the city and parish of Orleans, duly commissioned and sworn certify that the foregoing has been faithfully extracted from the several acts therein mentioned, passed before Pierre Pedesclaux and Phillippe Pedesclaux, our predecessors, and now in my office and under my care.

In faith whereof I have signed these presents and have affixed thereto my seal of office, at New Orleans, the third of March, 1840.

(Signed) LOUIS T. CAIRE, *Not. Pub.*

Document Marked No. 3, Being Sale of Land, Jean Gravier to George T. Ross.

Know all men by these presents that I, John Gravier, of this city, do really and effectually sell unto George A. Ross, of said city, nine lots of land situated in the suburbs of St. Mary, forming an island facing to the canal, measuring one hundred & eighty feet front to said canal, three hundred feet to Fortier street, one hundred & eighty feet to Place Gravier street, & three hundred feet to Cirque street; the said nine lots of land comprehended under the numbers thirty-one, thirty-two, thirty-three, thirty-four, thirty-five, thirty-six, thirty-seven, thirty-eight, and thirty-nine, according to the plan, the whole belonging to me for having inherited them of my late brother, Beltran Gravier; the whole free from mortgage, as is certified by me, the present notary, keeper of them; the said lots of land sold, with their entries, going-outs, uses, customs, rights, & services, for and in consideration of the sum of three thousand one hundred & fifty Mexican dollars; on account of which sum I do hereby recognize to have received that of three hundred & ninety dollars; and as the delivery is not made in presence of the notary, I renounce to the right of exception for the *non numerata pecunia*, and grant formal receipt, and as to the remaining two thousand seven hundred and sixty dollars he shall pay them unto me in the following manner: nine hundred and twenty dollars in one year from the date, nine hundred & twenty dollars in two years, and nine hundred and twenty dollars in three years from this same date; and for the security of said payment the said George A. Ross specially mort-

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gages the same nine lots of land, binding himself not to sell or alienate the said nine lots of land till the entire payment of the said two thousand seven hundred and sixty dollars or — obtained the nullity of this present mortgage; by means of which acknowledgement I, the said John Gravier, abandon all rights of property, possession, power of use, and dominion that I had on the said lots of land, and the whole I transfer and give over to the said George A. Ross, his executors, administrators, and assigns, to the end that he may possess, sell, bargain, change, or alienant the same as he may think fit by virtue of this public instrument, which I grant in his favor as a sign of real delivery and by which he is proved to have acquired the possession without need of any other proof, of which I relieve him, and I bind myself to the erection, security, and responsibility of this sale in due form of law; and I, the aforesaid George A. Ross, being here present, accept in my favor this said bill of sale, acknowledging herein the purchase of the said nine lots of land in the manner sold unto me, binding myself to pay at the stipulated terms the aforesaid two thousand seven hundred & sixty dollars, ac-
134 knowledging the land as delivered to my satisfaction, hereby granting formal receipt, and to the due ful/filment of the premises each party have bound *themselves* in due form of law.

In testimony whereof these presents are done and passed, at the city of New Orleans, on the eighteenth day of June, in the year of our Lord one thousand eight hundred & five, & in the twenty-ninth of American Independence.

(Signed) JN. GRAVIER.
GEO. T. ROSS.

I, the notary, certify to know the parties who have signed with & in presence of John B^te^ Ramirez & Joachim Lozano, citizens here present.

PIERRE PEDESCLAUX, *N^re^*.

JN. BTE. RAMIREZ.
JOAQ^N^ LOZANO.

Collated.

I certify the foregoing to be a true copy of the original act extant in my register according to the laws and usage of this State.

In faith whereof I grant these presents, under my signature and the impress of my seal of office, at New Orleans, the 5th June, 1839.

[SEAL.] (Signed) LOUIS T. CAIRE, *Not. Pub.*

(Endorsed:) No. 3 Place Gravier St., 18th June, 1805. Sale of land, Jean Gravier to George T. Ross. No. 4. French *et al. vs.* Carrollton R. R. Co. No. 10. Filed 18 June, 1845. Filed March 11th, 1840. (Signed) T. Gilmore, d'y cl'k. Supreme court Filed Nov'ber 24th, 1840 (Signed) A. Couvillier, cl'k. Pierre Pedesclaux, n^re^. No. 47374. Civil dist. court. City of N. O. *vs.* P. Werlein. Offered in evidence by pl'ff. Filed Dec. 17th, 1896. (Signed) Joe Garidel, d'y cl'k.

Document Marked No. 4, *Plaintiff's Document No.* 4, *Being Act of Mortgage by Edward Livingston to the Insurance Company of New Orleans.*

Aujour d'hui, cinq du mois de Juin de l'année mil huit cent cinq, et de l'indépendance Americaine la Vingt neuvième,—

Par devant nous Pierre Pedesclaux notaire public des Etats Unis de l'Amérique à la Nouvelle Orléans.

Fut présent: Mr. Edouare Livingston avocat, lequel à dit et déclaré qu'il aurait formé le projet de prendre quarante actions à la Compagnie d'assurance de la Nouvelle Orléans de la quelle est Président Mon^r^ Thomas L. Garnaud ce qu'il aurait effectué et aurait payé quartre Mille piastre, desquels mondis sieur Graneaud en sa qualité présent et acceptant lui donne quittance d'autant et quant aux trente six mille piastres restantes il promet et s'oblige de les payer et rembourser à la volonté du président et des directeurs de la dite Compagnie sitôt qu'il en sera requis à quoi il oblige tous ses biens présents et avenir.—que pour assurer le payement d'une somme de vingt-mille gourdes à la dite compagnie d'assurance de la Nouvelle Orléans il avait cédé, céddé et transporté a Mon^r^ J^n^ Gravier ci présent et acceptant, vingt actions pour l'enoncee somme de vingt mille gourdes sous l'expresse condition qu'il fournirait pour le reimboursement de cette somme aussitôt qu'il en serait requis un hypothéque sufisant et qui fut adoptée pas les susdits presédens et directeurs en conséquence il set désiste en faveur du du Gravier du droit de propriété qu'il a au dit vingt actions et en a revêtu le sieur Gravier pour qu'il en jouisse et en dispose conformement à la Charte, en vertu de laquelle cession le nomme Gravier s'oblige de rembourser et payer à la ditte Compagnie D'assurance de la Nouvelle Orléans la susdite somme de vingt mil piastres à la volonté du president et directeurs de la dite Compagnie et aussitôt qu'il en sera requis à quoi il oblige ses biens presens et avenir, et notamment et specialement cent quatre vingt quatre terrains situés au faubourg Ste Marie et compris dans les deux plans numero *un et deux* formé par M. M. Barthelemy Lafon et Hillaire Boulet qu'il nous à exhibé en se moment afin que apres les avoir signés et paraphés *Ne Varietur* ils soient remis à la dite Compagnie d'assurance avec un certificat que les sus dit terreins ne sout pas hypothéques et dont l'évaluation faite par les énoncés Lafon et Hilaire Boulet laquelle seleve à la somme de trente mille trois cent quatre pias tres suivant le procès verbal d'estimation que nous avons signé et paraphé également *Ne Varietur*, lesquels terrains sont situés et numérotés comme suit.

Dans la rue de la Briqueterie sous les Nos. 88, 89, 90, 91, 101, 102, 103, 104, 105, 106, 109, 110, 121, les terrains situes dans la rue Salcédo reconnu sous les numéros 49, 30, 58, 52, 53, 551, 92, 93, 94, 95, 96, 97, 98, 99, 100, 112, 113, 116, 117, les terrains situés dans les rues Julie, Girod, Hevia, entre les rues Salcédo et Calalou sous les Nos. 47, 48, 54, 56, 63, 64, 65, 40, 41, 42, 43, 44, 45, 46, 58, 59, 60, 61, 62,

5, 6, 134, 11, 12, 20, 21, 22, 23, les terreins situés rue du Cirque
136 par les numéros: 2-3-133-7-8-9-16-17-18-19. Divers terrains situés sur le bord du Canal et place Gravier rue Fortier sous les Nos. 135, 136, 137, 138, 139, 140, 141, 142, 143, 144—tous les terrains situés sur les rues St. Paul sous les Nos. 3-5-7-9-11-13-15-16-17-19-21-23-25-27-29-31-33-35-37-39—les terrains situés sur la rue St. Pierre numérotés 4-6-8-10-12-14-16-18-20-22-26-26-28-30-32-36-36-38-40-41-43-45-47-49-51-53-55-57-59-61-63-65-67-69-71-73-75-79-77—Les terrains situés sur la rue St. Jean numérotés 42-44-46-48-50-52-54-56-58-60-62-64-66-68-70-72-74-76-78-80-81-83-85-87-89-91-93-95-97-99-101-103-105—et finissant les terrains sur la rue du Cirque sous les numérotés 82-84-86-88-90-92-94-96-98-500-502-104 et 106—lesquels dits terrains le dit sieur Gravier promét et l'oblige à ne vendre ni aliéner avant que la dite Compagnie ne soit payée de la sus dite somme de vingt mille piastres ou qu'elle naye donnée main levée du dit hypothéque lesquéls conditions mondit sieur Thomas L. Garneaud en sa qualité a accepte car ainsi &c. Fait et passé en l'étude a la Nouvelle Orleans, les jour et an que dessus, en presence des sieurs Jean Baptiste Ramirez et Joachim Lozano, témoins qui ont signé avec les parties obligée et Mr. Garneaud en sa qualite et en présence de nous notaire, dont acte.

Colla trouvé.

(Signe) JN. GRAVIER.
EDW. LIVINGSTON.
THOS. L. HARMAN, *Pres*t.
PIERRE PEDESCLAUX, *Not*re.

JOAQN LOZANO.
JN. BTE RAMIREZ.

Pour copie conforme à l'original resté en mon étude pour recours; en foi de quoi j'ai signé ces présentes et y ai appose le soçeau de mon office à la Nouvelle Orléans ce troisième jour du mois de Mai mil huit cent trente neuf. un mot sayé nul.

[SEAL.] (Signed) LOUIS T. CAIRE, JR., *Not. Pub.*

(Endorsed:) $3. 5 Juin 1805, obligm Hypothécaire par Edward Livingston à la Compagne d'assurance de la Nlle Orléans. No. 11. 15983. Filed 18 June, 1845. Plan wanted. (Signed) T. Gilmore, d'y cl'k. No. 7. Filed March 11th, 1840. 4093. Supreme court. Filed Novbr 24th, 1840. A. Couvillier, cl'k. Transferred from the late 1st judicial district court to the civil district court. No. 39660. Filed July 19th, 1893. (Signed) Onofré Triay, deputy clerk. No. 4. No. 45374. Civil dist. court. City of N. O. *vs.* P. Werlein. Offered in evidence by pl'ff. Filed Dec. 17th, 1896. Joe Garidel, d'y cl'k.

137 *Translation of the Above Document No.* 4.

This day the 5th of the month of June of the year 1805 and the American Independence the 29th: Before me Pierre Pedesclaux, notary public of the United States of America, in New Orleans, was

present Mr. Edward Livingston, attorney-at-law, who said and declared that he had projected to take 40 shares in the Insurance Company of New Orleans of which Mr. Thomas L. Garnaud was its president, and that he had affected and paid four thousand dollars, of which the said Mr. Garnaud in his capacity being present and accepting gives an acquittance for that much, and as regards the thirty-six thousand dollars remaining, he promises and binds himself to pay and reimburse the same, subject to the order of the president and directors of the said company as soon as he shall be required to do so for which he affects all his property, present and future; that to secure the payment of the sum of $20,000 to the said Insurance Company of New Orleans, he had ceded, cedes and transfer-ed to Mr. J^{e} Gravier, here present and accepting, 20 shares for the said sum of $20,000 under the express condition that he would furnish for the reimbursement of that sum as soon as he would be required to do so a sufficient mortgage which would be accepted by the said president and directors. Wherefore he divests himself in favor of the said Gravier of the right of ownership which he has in and to the said 20 shares and invests the same in the said Mr. Gravier to be by him enjoyed and disposed of in conformity with the charter. By virtue of which cession the said Gravier binds himself to reimburse and pay to the said Insurance Company of New Orleans the said sum of $20,000 on the order of the president and directors of said company as soon as he shall be so required, to which he affects his property, present and future, and particularly and specially 184 lots of ground situated in Faubourg St. Mary and comprised in the two plans Nos. 1 and 2 made by M. N. Barthelemy Lafon and Hillaire Boulet which he has exhibited to us at this moment, so that after being signed and paraphed *ne varietur*, they be delivered to said insurance company with a certificate that the said lots of ground are not mortgaged and the valuation thereof made by the said Lafon and Hillaire Boulet which amount to the sum of $30,304 according to the process verbal of appraisement which we have signed
138 and paraphed *ne varietur*, which said lots of ground are situated and appear as follows:

In the Briqueterie street by the numbers 88, 89, 90, 91, 101, 102, 103, 104, 105, 106, 109, 110, 111.

The lots situated in Salcedo street are known as numbers 49, 30, 58, 52, 53, 55, 92, 93, 94, 95, 96, 97, 98, 99, 100, 112, 113, 116, 117.

The lots situated on Julia, Girod, Hevia streets, between Salcedo and Calalou street- by the numbers 47, 48, 54, 56, 63, 64, 65, 40, 41, 42, 43, 44, 45, 46, 58, 59, 60, 61, 5, 6, 134, 11, 12, 20, 21, 22, 23.

The lots situated in Circus street by the numbers 2, 3, 133, 7, 8, 9, 16, 17, 18, 19.

Various lots situated on the bank of the canal, Gravier square, Fortier streets, by the numbers 135, 136, 137, 138, 139 140, 141, 142, 143, 144.

All the lots situated on St. Paul streets by the numbers 3, 5, 7, 9, 11, 13, 15, 16, 17, 19, 21, 23, 25, 27, 29, 31, 33, 35, 37, 39.

The lots situated on St. Peters street are numbered 4, 6, 8, 10, 12,

14, 16, 18, 20, 22, 26, 26, 28, 30, 32, 36, 36, 38, 40, 41, 43, 45, 47, 49, 51, 53, 55, 57, 59, 61, 63, 65, 67, 69, 71, 73, 75, 79, 77.

The lots situated on St. John street are numbered 42, 44, 46, 48, 50, 52, 54, 56, 58, 60, 62, 64, 66, 68, 70, 72, 74, 76, 78, 80, 81, 83, 85, 87, 89, 91, 93, 95, 97, 99, 101, 103, 105; and finally the lots on Circus street by the numbers 82, 84, 86, 88, 90, 92, 94, 96, 98, 500, 502, 104 and 106, which said lots of ground the said Gravier promises and binds himself not to sell or alienate before the said company has been paid the said sum of $20,000, and that it has given release of the said mortgage, which condition the said Mr. Thomas L. Garnaud, in his capacity, accepts. It was thus.

Done and passed in New Orleans, the day and year aforesaid in the presence of Messrs. Jean Baptiste Ramirez, Joachim Lozano, witnesses, who have signed with the said parties and Mr. Garnaud in his capacity and in the presence of myself, notary, of which act.

(Signed) J^N GRAVIER.
EDW. LIVINGSTON.
THOS. L. HARMAN, *Pres^t.*
PIERRE PEDESCLAUX, *Notary.*

JOAQ^N LOZANO.
J^N BTE. RAMIREZ.

A true copy of the original on file in my office for reference.

In faith whereof I have signed these presents and have affixed thereto the seal of my office at New Orleans this 3rd day of the month of May, 1839.

(One word erased null.)

[SEAL.] (Signed) LOUIS T. CAIRE, *Not. Pub.*

139 *Document Marked No. 5, Being Sale of Ground, Jean Gravier to Jacques Larche.*

Aujour d'hui dix neuvieme jour d'Octobre de l'année mil huit cent quatre, la vingt neuvième de l'Indépendance americaine, avant medy.

Pardevant nous Pierre Pedesclaux, notaire public des Etats-Unis d'Amerique à la Nouvelle Orléans, capitale de la Louisiane.

Fut présent le Sieur Jean Gravier habitant, demeurant faubourg Ste Marie de cette ville.

Lequel de son bon gre, propre mouvement et pure volonté à par ces présentes, vendée, cédé, quitté et transporté avec promesses de guarantée de tous trouble, dettes, hypothéques et autres èmpêchements quelconques.

Au Sieur Jacques Larche, habitant demeurant près cette ville, cy present et acceptant pour lui, ses hoirs ou ayant cause.

Un morceau de terre formant un itel entier, ayant trois cent pieds de face à la rue de la Briqueterie, sur cent vingt six à la rue Poydras d'un coté et parèille quantité sur celle de la rue et place Gravier, le dit itel divisé en dix terreins compris sous les numeros cent vingt trois, cent vingt quatre, cent vingt cinq, cent vingt six, cent vingt Sept, huit, cent vingt neuf, cent trente, cent trente un et cent trente

deux, chaque terrain ayant seixante pieds de face sur cent treize de profondeur; appartenant au dit Sieur vendeur pour l'avoir, heritté de feu Sr Bertrand Gravier son frere.

Le morceau de têrre cy-dessus vendu, tel qu'il se pour sent et comporte avec tous ses droits, usages et servitudes, sans en rien reserver ni retenir et tel qu'en à joue le dit S^r^ vendeur, lequel morceau de têrre le dit S^r^ acquireur à dit bien connaitre pour l'avoir vu et visite et dont il est content.

La presente vente faitte et acceptée entre les parties aux clauses et conditions cy-dessus, en présence et du consentement des Sieur Alexandre Baudin, habitant, lequel pour faciliter le dit S^r^. Gravier à donné main-levée pure et simple de l'hypothéque souffert à son profit sur le morceau de têrre cy-dessus vendu, reservant en sa force et rigueur l'hypothéque sur les autre biens du dit sieur Gravier; et en outre pour la somme de trois mille piastres gourdes, que le dit sieur vendeur reconnait avoir recu du dit sieur acquereur qu'il à quitté et quitté, s'est désisté et séparé de tous droits de propriété sur le dit morceau de têrre cy dessu vendre, en faveur du dit S^r^ acquereur qu'il en à saisi et revetu pour, par lui en jouir comme de chose lui appartenant des maintenant et à toujours, et en prendre possession quand con lui semblera, car ainsi s'obligeant & promettant & soumittant &c dont acte et juge de leur consentement fait et passé en notre étude a la Nouvelle Orleans, le jour et an que dessus en presence des sieurs Jean Baptiste Ramirez et Joachim Lozano, témoins qui ont signé ainsi que les parties en presence de nous Notaire sous signe.

(Signé) JAQUE LARCHE.
J^s^ GRAVIER.
PIERRE PEDESCLAUX.

JOAQ'N LOZANO.
JEAN B^TE^ RAMIREZ.

Pour copie conforme a l'original résté en mon étude pour recours: En foi de quoi j'ai signé le present et y'ai apposé le sceau de mon office à la Nouvelle Orléans le onze Mars mil huit cent quarante.

[SEAL.] (Signed) LOUIS T. CAIRE, *Not. Pub.*

(Endorsed:) No. 5. 19th Octobre, 1804. Vente de terre Jean Gravier à Jacques Larche. No. 7. 15983. Filed 18 June, 1845. (Signed) T. Gilmore, d'y cl'k. 13. Filed March 11th, 1840. 4093. Supreme court. Filed Nov'ber 24th, 1840. (Signed) A. Couvillier, cl'k. Pierre Pedesclaux, not. pub. No. 47374. Civil dist. court. City of N. O. *vs.* P. Werlein. Offered in evidence by pl'ff. Filed Dec. 17th, 1896. (Signed) Joe Garidel, d'y cl'k.

Translation of the Foregoing Document Marked "No. 5."

This the 19th day of October of the year 1804, the 29th of the American Independence, before noon, before me, Pierre Pedesclaux, notary public of the United States of America, in New Orleans, capital of Louisiana, was present Mr. John Gravier, planter, residing

in Faubourg St. Mary of this city, who of his own pure move and free will has by these presents, sold, conveyed, assigned and transferred with promise of warranty, against all troubles, debts, mortgages and other encumbrances whatsoever to Mr. Jacques Larche, planter residing near this city, here present and accepting for himself, his heirs and assigns, a portion of ground forming the whole square, having 300 feet front on Briqueterie street by 126 feet on Poydras street on one side, and same measurement on the side of the street and Gravier square, the said square divided into
141 ten lots denominated by the numbers 123, 124, 125, 126, 127, 128, 129, 130, 131 & 132, each lot having 60 feet front by 113 in depth and belonging to the said vendor, for having inherited the same from the late Mr. Bertrand Gravier his brother. The portion of ground herein conveyed as it stands with all its uses and servitudes, without any exception or reservation and such as it has been enjoyed by the said vendor, which said portion of ground the said purchaser declares to know well for having seen and visited it and to be satisfied with it.

The present sale is made and accepted between the aforesaid parties to the clauses and conditions in the presence and with the consent of Mr. Alexander Baudin, planter, who for the purpose of facilitating Mr. Gravier to give, release, pure and simple of the mortgage, granted in his favor on the said portion of ground hereinbefore conveyed, reserving in force and virtue the said mortgage on the other property of the said Mr. Gravier and in addition for the sum of three thousand dollars, which the said vendor acknowledged to have received from the said purchaser to whom he acquits and discharges and abandons all the rights of ownership on the said portion of ground herein conveyed in favor of the said purchaser whom he has put in full ownership to be by him enjoyed as his own property from now and forever and to take possession thereof at his pleasure, thus binding himself etc. of which act with their consent.

Done and passed in my office in New Orleans, the day and year aforesaid in presence of Mr. Jean Baptiste Ramirez and Joachim Lozano, witnesses who have signed with the said parties in the presence of the undersigned notary.

(Signed) JAQUE LARCHE.
J^N^ GRAVIER.
PIERRE PEDESCLAUX.

JOAQ^N^ LOZANO.
JEAN B^TE^ RAMIREZ.

A true copy of the original on file in my office for reference. In faith whereof I have signed these presents, and thereto affixed my seal of office, in New Orleans, the 11th day of March 1840.

[SEAL.] (Signed) LOUIS T. CAIRE, *Not. Pub.*

Document Marked No. 6, Being Sale of Property, Blaise Cenas, Sheriff, to Jacques Moulon.

Pardevant nous Narcisse Broutin, notaire public des etats
142 unis d'Amerique, en la ville de la nouvelle Orléans et les témoins ci-après nommés,

Est comparu le sieur Blaise Cenas sheriff de l'arrondissement d'orléans, demeurant en cette ville.

Le quel a dit qu'en vertu de deux Writ de *fieri facias* qui lui ont été addressés par la Cour Superieure de ce territoire et par la Cour de Paroisse de cette Ville les trente Juin et dix Aôut de l'année dernière mil huit-cent Sept. contre les effets, meubles, immeubles, têrres et propriétés du Sieur Jean Gravier proprietaire demeurant au Faubourg Ste Marie de cette Ville, sur les poursuites des Sieurs Alexandre Baudin et Jean Lesse demeurants dans cet arrondissement, il a saisi, en totalité, quarente cinq terreins situés dans le dit Faubourg Ste Marie de cette ville, dont les designations suivent, savoir, Le No. cent trois faisant encoignure des Rues Briqueterie et Julie contenant soixante pieds deface sur cent vingt pieds de profondeur.

Le No. cent quartre de soixante pieds de face a la même Rue de Briqueterie sur cent vingt pieds de profondeur.

Le No. cent Cinq de quarante cinq pieds deface à la même rue de Briqueterie sur cent soixante de profondeur.

Le No. cent six de quarante cinq pieds de face à la dite rue de Briqueterie sur cent soixante de profondeur.

Le No. Cent neuf de soixante pieds de face à la même rue de Briqueterie sur cent vingt de profondeur.

Le No. cent Deux de soixante pieds de face à la rue Julie sur cent vingt pieds de profondeur.

Le No. cent un de quarante pieds de face à la même rue Julie sur cent quatre vingt de profondeur.

Le No. cent, de quarante pieds de face à la même rue Julie sur cent quatre vingt pieds de profondeur.

Le No. Quatre vingt dix huit de soixante pieds de face à la dite rue Julie sur cent vingt pieds de profondeur.

Le No. Quatre vingt douze, formant encoignure des rues Julie et Salcédo de soixante pieds de face sur cent vingt pieds de profondeur.

Le No. Quatre vingt-trieze de soixante pieds deface à la même rue Salcédo sur vingt pieds de profondeur.

Le No. Quatre vingt-quatorze de quarante cinq pieds de-
143 face à la dite Rue Salcédo sur cent Soixante pieds de profondeur.

Le No. Quatre vingt quinze de quarante cinq pieds de face à la même rue Salcédo sur cent soixante pieds de profondeur.

Le No. Quatre vingt seize de soixante pieds de face à la même rue Salcédo sur cent vingt pieds de profondeur.

Le No. Quatre vingt-dix Sept de soixante pieds de face sur cent

vingt pieds de profondeur et formant encoignure des Rues Salcédo et Girod.

Le No. Quatre vingt onze de soixante pieds de face sur cent vingt pieds de profondeur et formant encoignure des Rues Briqueterie et Julie.

Le No. Quatre vingt neuf, de soixante pieds de face à la rue Briqueterie sur cent vingt pieds de profondeur.

Le No. Quatre vingt huit, de soixante pieds de face à la même rue Briqueterie sur cent vingt pieds de profondeur.

Le No. Quatre vingt six de soixante pieds deface à la Rue Julie sur cent vingt pieds de profondeur.

Le No. Quarante neuf de soixante pieds de face sur cent vingt pieds de profondeur, et formant encoignure des Rues Salcédo et Julie.

Le No. cinquante, de soixante pieds de face à la rue Salcédo sur cent vingt pieds de profondeur.

Le No. Cinquante et un de soixante pieds de face à la même rue Salcédo sur cent vingt pieds de profondeur.

Le No. Cinquante deux, de quarante cinq pieds deface à la rue à la dite, rue Salcédo, sur cent cinquante pieds de profondeur.

Le No. Cinquante trois, de quarante cinq pieds de face à la même rue Salcédo, sur cent cinquante pieds de profondeur.

Le No. Cinquante cinq de soixante pieds de face à la même rue Salcédo sur cent vingt pieds de profondeur.

Le No. cinquante six de soixante pieds de face à la rue Girod sur cent vingt pieds de profondeur.

Le No. cinquante quatre de soixante pieds deface à la même rue Girod sur cent quartre vingt pied de profondeur.

Le No. Quarante huit de soixante pieds de face à la même rue Girod, sur cent vingt pieds de profondeur.

Le No. Quarante six de soixante pieds de face sur cent vingt pieds de profondeur et formant encoignure des rues Girod et Calalou.

144 Le No. Quarante cinq de soixante pieds de face à la rue Calalou sur cent vingt pieds de profondeur.

Le No. Quarante quatre de quarante cinq pieds de face à la même rue Calalou sur cent cinquante pieds de profondeur.

Le No. Quarante trois de quarante cinq pieds deface à la même rue Calalou sur cent-cinquante pieds de profondeur.

Le No. Quarante deux de soixante pieds deface à la même rue Calalou sur cent vingt pieds de profondeur.

Le No. Quarante et un, de soixante pieds de face à la même rue Calalou sur cent vingt-pieds de profondeur.

Le No. Quarante de soixante pieds de face sur cent vingt de profondeur, et formant encoignure des Rues Calalou et Julie.

Le No. Quarante Sept de Soixante pieds de face à la rue Julie sur cent quatre vingt pieds de profondeur.

Le No. Soixante huit de soixante pieds de face sur cent vingt pieds de profondeur et formant encoignure des Rues Salcédo et Girod.

Le No. Soixante Cinq de soixante pieds de face à la rue Girod sur cent vingt pieds de profondeur.

Le No. Soixante trois, de soixante pieds de face à la même rue Girod sur cent cinquantre pieds de profondeur.

Le No. Cinquante huit de soixante pieds de face sur cent vingt pieds de profondeur et formant encoignure des Rues Girod et Calalou.

Le No. Cinquante neuf de soixante pieds de face à la rue Calalou sur cent vingt pieds de profondeur.

Le No. Soixante, de soixante pieds de face à la même rue Calalou sur cent vingt pieds de profondeur.

Le No. Soixante et un de soixante pieds de face à la même rue Calalou sur cent vingt pieds de profondeur.

Le No. Soixante deux de soixante pieds de face sur cent vingt pieds de profondeur et formant encoignure des rues Calalou et Hevia.

Et le Soixante quatre de soixante pieds de face à la rue Hevia sur cent cinquante pieds de profondeur-le tout conformement au plan qui nous à été representé par le dit Sieur Gravier.

Qu'ayant exposé les dits terreins, en vente publique conformement à la loi, Se Sieur Jacques Moulon marchand Boulanger en cette ville s'en est rendu l'acquereur le vingt cinq du present
145 mois, pour le prix de neus mille quatre vingt piastres quarante deux cents trois quarts, sur laquelle le dit Sieur Cenas en sa qualité de Sheriff reconnait par le present avoir recu comptant celle de six cent quatre vingt quinze piastres et trente six cents, pour le moutant des. frais dans les dites instances, et à l'égard du surplus qui est de huit mille trois cent quatre vingt cinq piastres et six cents trois quarts formant le montant des créances dues aux dits Sieurs Baudin et Lesse. Le dit Sieur Jacques Moulon leur a individuellement souscrit une obligation hypothécaire avec cautionnement conformement à la deuxieme Section de l'acte du corps législatif de ce territoire du vingt cinq Mars dernier, savoir, au Sieur Baudin de la somme de huit mille piastres et au Sieur Lesse de celle de trois cent quatre vingt cinq piastres et dix Sept cents pour ce qui leur est respectivement du, Les dites sommes payables dans un an à comptes du vingt-cinq du present mois jour de l'adjudication susdatée. En consequence de ce que dessus et en vertu de l'acte fait & rendu sur cet objet, le dit Sieur Blaise Cenas Sheriff a declaré et declaré par ces presentes, cédés, quittér, vendre, transporter et delaisser au dit Sieur Jacques Moulon ses h^ers^ ou ayans cause, les quarantes cinq terreins ci dessus decrits, avec tous les droits, titres, pretentions ou actions que le dit Sieur Jean Gravier avait dans les dits terreins, le jour du dix Aôut mil huit cent Sept: Pour le dit Sieur Jacques Moulon a perpetuité.

Dont acte:—fait et passé a la Nouvelle Orléans en l'étude de nous Notaire, le vingt Septieme jour du mois de Mai de l'année mil huit cent huit et la trente deuxieme de l'indép^ce^ americaine en presence des Sieurs Simon Ducournau et Pierre François Simon Godefroy, tous deux témoins requis et domiciliés en cette ville, qui ont, ainsi

que les Sieurs Cenas et Moulon, signé avec nous notaire apres lecture faite.

Signé: B[E] CENAS, *Sheriff.*
JACQUES MOULON.
NARCISSUS BROUTIN, *Not'y Publ.*

SR. DUCOURNAU.
GODEFROY.

A true copy of the orginal in my office.
New Orleans, 11th March, 1840.
[SEAL.] (Signed) WM. CHRISTY, *Not. Pub.*

(Endorsed:) No. 6. 27th May, 1808. Sale of property,
146 Blaise Cenas, sheriff, to Jacques Moulon. 4093. 8. Filed March 11th, 1840. (Signed) John Gayle, F. E. 4093. Supreme court. Filed November 24th, 1840. (Signed) A. Couvillier, clerk. No. 12-15983. Filed 18 June, 1845. (Signed) T. Gilmore, d'y cl'k. Transferred from the late 1st judicial district court. No. 39660. Filed July 19th, 1893. (Signed) Onofré Triay, deputy clerk. No. 45374. Civil dist. court. City of N. O. *vs.* P. Werlein. Offered in evidence by pl'ff. Filed Dec. 17th, 1896. (Signed) Joe Garidel, d'y cl'k.

Translation of the Foregoing Document No. 6.

Before me Narcisse Broutin notary public of the United States of America, in the city of New Orleans, and the witnesses hereinafter named,

Has appeared Mr. Blaise Cenas, sheriff of the county of Orleans, residing in this city who declared that by virtue of two writs of *fieri facias* to him directed by the superior court of this territory, and by the parish court of this city the 30th of June and 10th of August of of last year, 1807, against the effect- movable, immovable, lands and property of Mr. Jean Gravier proprietor residing in Faubourg St. Mary in this city at the suit of Messrs. Alexander Baudin and Jean Lesse, residing in this county, he has seized in whole 45 lots of ground situated in said Faubourg St. Mary of this city of which the description- are as follows to wit:

The No. 103 forming the corner of Briqueterie and Julia street- has 60 feet front by 120 feet in depth.

No. 104—60 feet front on said Briqueterie street by 120 feet in depth.

Lot 105—45 feet front on said Briqueterie street, by 160 feet in depth.

Lot 106—45 feet front on said Briqueterie street by 160 feet in depth.

No. 109—60 feet front on said Briqueterie street by 120 feet in depth.

No. 102—60 feet front on Julia street by 120 feet in depth.

Lot No. 101—40 feet front on said Julia street, by 180 feet in depth.

Lot No. 100—40 feet front on said Julia street by 180 feet in depth.

147 Lot No. 98—60 feet front on said Julia street, by 120 feet in depth.

Lot No. 92—Forming the corner of Julia and Salcedo streets, 60 feet front by 120 feet in depth.

No. 93—63 feet front on said Salcedo street, by 120 feet in depth.

Lot No. 94—45 feet front on said Salcedo street by 160 feet in depth.

Lot No. 95—45 feet front on said Salcedo street by 150 feet in depth.

Lot No. 96—60 feet front on said Salcedo street by 120 feet in depth.

Lot No. 97—67 feet front by 120 feet in depth, and forming the corner of Salcedo and Girod streets.

Lot No. 91—60 feet front by 120 feet in depth, and forming the corner of Briqueterie and Julia street-.

Lot 89—60 feet front on Briqueterie street, by 120 feet in depth.

Lot 88—60 feet front on said Briqueterie street by 120 feet in depth.

Lot 86—60 feet front on Julia street by 120 feet in depth.

Lot 49—60 feet front by 120 feet in depth and forming the corner of Salcedo and Julia street-.

No. 50—60 feet front on Salcedo street by 120 feet in depth.

Lot No. 51—60 feet front on said Salcedo street, by 120 feet in depth.

No. 52—45 feet front on said Salcedo street by 150 feet in depth.

No. 53—45 feet front on said Salcedo street by 150 feet in depth.

Lot No. 55—60 feet front on said Salcedo street by 120 feet in depth.

Lot No. 56—60 feet front on Girod street by 120 feet in depth.

Lot No. 54—60 feet front on Girod street by 180 feet in depth.

No. 48—60 feet front on said Girod street by 120 feet in depth.

Lot No. 46—60 feet front by 120 feet in depth, and forming the corner of Girod and Calalou street-.

No. 45—60 feet front on Calalou street by 120 feet in depth.

148 No. 44—45 feet front on said Calalou street by 150 feet in depth.

Lot 43—45 feet front on said Calalou street by 150 feet in depth.

Lot No. 42—60 feet front on said Calalou street by 120 feet in depth.

Lot No. 41—60 feet front on said Calalou street by 120 feet in depth.

Lot No. 40—60 feet front by 120 feet in depth, and forming the corner of Calalou and Julia street-.

Lot No. 47—60 feet front on Julia street by 180 feet in depth.

Lot No. 68—60 feet front, by 120 feet in depth, and forming the corner of Salcedo and Girod streets.

Lot No. 65—60 feet front on Girod street by 120 feet in depth.

Lot 63—60 feet front on said Girod street by 150 feet in depth.

Lot No. 58—60 feet front by 120 feet in depth, and forming the corner of Girod and Calalou street-.

Lot No. 59—60 feet front on Calalou street by 120 feet in depth.

Lot 60—60 feet front on said Calalou street by 120 feet in depth.

Lot No. 61—60 feet front on said Calalou street by 120 feet in depth.

Lot No. 62—60 feet front by 120 feet in depth, and forming the corner of Calalou and Havia street-.

And lot No. 64—60 feet front on Havia street by 150 feet in depth, the whole in conformity with a plan which has been produced to us by the said Mr. Gravier.

That having offered the said lots at public sale in conformity with the law Mr. Jacques Moulon merchant baker in this city has become the purchaser the twenty-fifth of the present month for the price of nine thousand and eighty dollars and forty-two cents and ⅞ths of which the said Mr. Cenas in his capacity as sheriff hereby acknowledges to have received cash the sum of six hundred and ninety-five dollars and thirty-six cents for the amount of the costs in the said suit, and as regards the balance amounting to eight thousand three hundred and eighty-five dollars and ⅞ths cents, forming the amount of the claim due to the said Messrs. Baudin and Lesse, the said Mr. Jacques Moulon has subscribed respectively to them a mortgage note with surety in conformity
149 with the second section of the act of the legislature of this territory of the 25th of March last, to wit:

To Mr. Baudin a note for the sum of eight thousand dollars, and to Mr. Lesse, one for three hundred and eighty-five dollars and seventeen cents for what is respectively due to them. The said sum payable in one year from the 25th of the present month, the day of the aforesaid adjudication.

By virtue of the foregoing and by virtue of the act made and rendered thereon the said Mr. Blaise Cenas, sheriff, has declared and declares by these presents, cedes, sells, conveys, transfers and assigns to the said Mr. Jacques Moulon, his heirs and assigns the 45 lots hereinabove described, with all the rights, title, claims, or actions which the said Mr. Jean Gravier had in and to the said lots on the 10th of August, 1807.

To have and to hold unto the said Jacques Moulon, his heirs and assigns forever in full ownership; of which act.

Done and passed at New Orleans, in the office of the undersigned notary, the twenty-seventh day of the month of May, of the year 1808 and the thirty-second of the American Independence, in the presence of Messrs. Simon Ducournau and Pierre Francois Simon Godefroy both witnesses required and domiciled in this city who have together with Messrs. Cenas and Moulon signed with me notary after reading.

(Signed) B. CENAS, *Sheriff.*
JACQUES MOULON.
SR. DOCOURNAU.
GODEFROY.
NARCISSUS BROUTIN, *Not. Pub.*

A true copy of the original in my office.
New Orleans, 11th March, 1840.
(Signed) WILLIAM CHRISTY, *Not. Pub.*

Document Marked No. 7, Being Sale of Lots, Joseph Moulon to Thomas L. Harman and Thomas & David Urquhart.

Pardevant Philippe Pedesclaux notaire public pour la Ville et paroisse de la Nouvelle Orléans, Etat de la Louisiane, et en presence des témoins ci-apres nommés

Fut present, Mr. Jacques Moulon, proprietaire, demeurant en cette Ville, lequel a, par ces presentes, Vendu, cédé et transporté,
150 avec garantie de tous troubles, evictions, dettes, hypothéques et autres empê chemens quelconques.

A Messieurs Thomas Urquhart et David Urquhart, negocians demeurant en cette ville, et Monsieur Thomas L. Harman proprietaire demeurant en la meme Ville, à ce presens & acceptant, acquereurs pour eux, leurs heritiers et ayant causes, quarante cinq terrains situés au faubourg Ste Marie de cette Ville dont les designations sont, d'apres le plan qui est demeuré ci-annéxé, apres avoir ete signe, par les parties, comme suit; savoir:

Le numéro cent trois faisant encoignure des rues Briqueterie et Julie, contenant soixante pieds de face, sur cent vingt pieds de profondeur.

Le numéro cent quatre ayant soixante pieds de face à la même rue de la Briqueterie, sur cent vingt pieds de profondeur.

Le numéro cent-cinq, de quarante cinq pieds de face à la même rue de la Briqueterie, sur cent soixante pieds de profondeur.

Le numéro cent six, de quarante cinq pieds de face à la même rue, de la Briqueterie, sur cent soixante pieds de profondeur.

Le numéro cent neuf, de soixante pieds de face à la même rue de la Briqueterie, sur cent vingt pieds de prefondeur.

Le numéro cent deux, de soixante pieds de face á la rue Julie, sur cent vingt pieds de profondeur.

Le numéro cent un, de quarante pieds de face à la même rue Julie sur cent quatre vingt pieds de profondeur.

Le numéro cent, de quarante pieds de face à la même rue Julie, sur cent quatre vingt pieds de profondeur.

Le numéro quatre vingt dix huit, de soixante pieds de face à la dite rue Julie sur cent vingt pieds du profondeur.

Le numéro quatre vingt douze, formant encoignure des rues, Julie & Salcédo de soixante pieds de face á la premiere sur cent vingt pieds de profondeur à la seconde.

Le numéro quatre vingt treize de soixante pieds de face à la rue Salcédo, sur cent vingt pieds de profondeur.

Le numéro quatre vingt quatorze, de quarante cinq pieds de face à la dite rue Salcédo, sur cent soixante pieds de profondeur.

Le numéro quatre vingt quinze, de quarante cinq pieds de face à la dite rue Salcédo sur cent soixante pieds de profondeur.

151 Le numéro quatre vingt seize, de soixante pieds de face à la dite rue Salcédo, sur cent vingt pieds de profondeur.

Le numéro quatre vingt dix Sept formant encoignure des rues Girod et Salcédo de soixante pieds de face à la premiere sur cent vingt pieds de profondeur à la seconde.

Le numéro quatre vingt onze, formant encoignure des rues Julie & de la Briqueterie, de soixante pieds de face à la premiere sur cent vingt pieds de profondeur à la seconde.

Le numéro quatre vingt neuf, de soixante pieds de face à la dite rue de la Briqueterie, sur cent vingt pieds de profondeur.

Le numéro quatre vingt huit, de soixante six pieds de face à la dite rue de la Briqueterie sur cent vingt pieds de profondeur, sa largeur diminuant en altant dans la profondeur.

Le numéro quatre vingt dix, de soixante pieds de face à la dite rue Julie, sur cent vingt pieds de profondeur.

Le numéro quarante neuf formant encoignure des rues Salcédo & Julie, ayant soixante pieds de face à la premiere sur cent vingt pieds de profondeur à la seconde.

Le numéro cinquante, de soixante pieds de face à la rue Salcédo sur cent vingt pieds de profondeur.

Le numéro cinquante & un, de soixante pieds de face à la dite rue Salcédo sur cent vingt pieds de profondeur.

Le numéro cinquante deux, de quarante cinq pieds de face à la dite rue Salcédo, sur cent cinquante pieds de profondeur.

Le numéro cinquante trois, de quarante cinq pieds de face à la dite rue Salcédo, sur cent cinquante pieds de profondeur.

Le numéro cinquante cinq, de soixante pieds de face à la dite rue Salcédo sur cent vingt pieds de profondeur.

Le numéro cinquante six, de soixante pieds de face à la rue Girod, sur cent vingt pieds de profondeur.

Le numéro cinquante quatre, de soixante pieds de face à la dite rue Girod, sur cent vingt pieds de profondeur.

Le numéro quarante huit, de soixante pieds de face à la dite rue Girod, sur cent vingt pieds de profondeur.

Le numéro quarante six, formant encoignure des rues Girod
152 & Calalou, de soixante pieds de face à la premiere, sur cent vingt pieds de profondeur à la Seconde.

Le numéro quarante cinq, de soixante pieds de face à la dite rue Calalou sur cent vingt pieds de profondeur.

Le numéro quarante quatre, de quarante cinq pieds de face à la dite rue Calalou, sur cent cinquante pieds de profondeur.

Le numéro quarante trois, de quarante cinq pieds de face à la dite rue Calalou, sur cent cinquente pieds de profondeur.

Le numéro quarante deux, de soixante pieds de face à la dite rue Calalou, sur cent vingt pieds de profondeur.

Le numéro quarante & un de soixante pieds de face à la dite rue Calalou sur cent vingt pieds de profondeur.

Le numéro quarante, formant encoignure des rues Callalou et Julie, ayant soixante pieds de face à la premiere sur cent vingt pieds de profondeur à la seconde.

Le numéro quarante Sept, de soixante pieds de face à la dite rue Julie, sur cent quatre vingt pieds de profondeur.

Le numéro soixante huit, formant encoignure des rues Girod &

Salcedo, ayant soixante pieds de face, à la première, sur cent vingt pieds de profondeur à la seconde.

Le numéro soixante cinq de soixante pieds de face à la dite rue Girod, sur cent vingt pieds de profondeur.

Le numéro soixante trois de soixante pieds de face à la dite rue Girod, sur cent cinquante pieds de profondeur.

Le numéro cinquante huit formant encoignure des rues Calalou & Girod, de soixante pieds de face à la première sur cent vingt pieds de profondeur à la seconde.

Le numéro cinquante neuf de soixante pieds de face à la dite rue Calalou, sur cent vingt pieds de profondeur.

Le numéro soixante, de soixante pieds de face à la dite rue Calalou, sur cent vingt pieds de profondeur.

Le numéro soixante & un, de soixante, pieds de face à la dite rue Calalou, sur cent vingt pieds de profondeur.

Le numéro soixante deux, formant encoignure des rues Calalou & Hevia de soixante pieds de face à la première sur cent
153 vingt pieds de profondeur à la seconde.

Et le numéro soixante quatre de soixante pieds de face à la dite rue Hevia sur cent cinquante pieds de profondeur.

Ainsi que tous ces terrains se poursuivent et comportent, sans en rien reserver ni retenir, les acquereurs declarant les bien connaitre, en être contens, & n'en pas desirer une plus ample désignation.

Pour en jouir, faire et disposer par les acquereurs comme de chose leur appartenant en toute propriété des maintenant et à toujours.

Ces terrains appartiennent au vendeur pour s'en être vendu adjudicataire à la vente publique faite par le Sieur Blaire Cenas sheriff du ci-devant comte d'Orléans par suite de la saisie que les Sieurs Alexandre Baudin et Jean Lesse avaient obtenue contre les biens du Sieur Jean Gravier, le tout suivant le contrat de vente que le dit sheriff lui a passé devant Mr. Narcisse Broutin notaire en cette ville, en date du vingt Sept mai mil huit cent huit.

La presente vente est faite pour et moyennant la somme de vingt mille piastres en deduction de laquelle les acquereurs ont presentement payé au vendeur celle de dix mille piastres en especes ayant cours de monnaie, comptées & 8 delivrées a la vue du notaire & des témoins sous signés. Dont quittance quant aux dix mille piastres restantes les acquereurs s'obligent solidairement entre eux de les payer au vendeur dans un an à compter de ce jour, sur les deux billets de cinq mille piastres chaque, payables à la dite époque, l'un souscrit par Messieurs Thomas & David Urquhart et endossé par Mr. Thoˢ L. Harman & l'autre souscrit par ce dernier et endossé par les dits Sʳˢ Thomas & David Urquhart lesquels billets après avoir été signés et paraphés *Ne Varietur* par le notaire sous signé pour les identifier avec les presentes ont été retirés par le vendeur qui le reconnait et en content décharge—

à la sûreté du paiement de ces deux billets, les quarante cinq terrains ci-dessus vendus sont et demeurent affectés et hypothéqués par privilège special expressement reservé au vendeur.

Sous la reserve de ce privilège le vendeur met & subroge les acquereurs dans tous les droits de propriété qu'il & peut avoir sur les

quarante cinq terrains presentement vendus, consentant que les acquereurs en soient saisis et revetus.

154 D'apres le certificat du conservateur à la date de ce jour, il n'y à point d'hypothéques contrale vendeur sur les terrains sus-decrits.

Fait et passé en l'étude, à la Nouvelle Orléans, le quinze du mois de Janvier de l'année mil huit cent dix huit, en presence des sieurs Michel Fourcisy et Vincent Bilote témoins qui ont signé avec les parties et le dit notaire.

Signé: MOULON.
T. & D. URQUHART.
THOS. L. HARMAN.
PHI. PEDESCLAUX, *Not. Pub.*

FOURCISY.
VT. BILOTE.

Pour copie conforme à l'original reste en mon etude pour recours: En foi de quoi, J'ai signe ces presentes, et j'ai appose le sceau de mon office à la Nouvelle Orléans le premier Mai 1839.

quatre. $: reellement, ces renvois, approves, un mot rayé nul.

[SEAL.] (Signed) LOUIS T. CAIRE, *Not. Pub.*

(Endorsed:) No. 7. $4.50. 15 Janvier, 1818. Vente de terrains. Js. Moulon à Thos. L. Harmon et Thomas & David Urquhart. Plan wanted. No. 9. Filed March 11th, 1840. No. 15983. Filed 18 June, 1845. (Signed) T. Gilmore, d'y clerk. (Signed) Phi. Pedesclaux, not. pub. 4093. Supreme court. Filed Novb^{r} 24th, 1840. (Signed) A. Couvillier, cl'k. Transferred from the late 1st judicial district court. No. 39660. Filed July 19th, 1893. (Signed) Onofré Triay, deputy clerk. No. 47374. Civil dist. court. City of N. O. *vs.* P. Werlein. Offered in evidence by pl'ff. Filed Dec. 17th, 1896. (Signed) Joe Garidel, d'y cl'k.

Translation of the Above Document "No. 7."

Before Phillippe Pedesclaux, a notary public for the city and parish of Orleans, State of Louisiana, and in the presence of the witnesses hereinafter named, was present Mr. Jacques Moulon proprietor residing in this city, who by these presents has sold, conveyed and transferred with guaranty against all troubles, evictions, deaths, mortgages, and other encumbrances whatsoever to Messrs. Thomas Urquhart and David Urquhart, merchants, residing in this city, and Mr. Thomas A. Harmon proprietor residing in the same city, here present and accepting, purchasing for themselves, their heirs and assigns, forty-five lots, situated in Farbourg St. Mary of this city the description whereof is according to the plan which is hereto annexed after being signed by the parties as follows, to wit:

155 The No. 103 forming the corner of Briqueterie and Julia street- containing 60 feet front by 120 feet in depth.

The No. 104 having 60 feet front on said Briqueterie street by 120 feet in depth.

The No. 105—45 feet front on said Briqueterie street by 160 feet in depth.

No. 106—45 feet front on the said Briqueterie street by 160 feet in depth.

No. 109—60 feet front on the said Briqueterie street by 120 feet in depth.

The No. 102—60 feet front on Julia street by 120 feet in depth.

The No. 101—40 feet front on said Julia street by 180 feet in depth.

No. 100—40 feet front on said Julia street by 180 feet in depth.

The No. 98—60 feet front on the said Julia street by 120 feet in depth.

The No. 92 forming the corner of Julia and Salcedo street—60 feet front on the first street by 120 feet in depth on the second.

The No. 93—60 feet front on Salcedo street by 120 feet in depth.

No. 94—45 feet front on said Salcedo street by 160 feet in depth.

The No. 95—45 feet on Salcedo street by 160 feet in depth.

The No. 96—60 feet front on said Salcedo street by 120 feet in depth.

The No. 97 forming the corner of Girod and Salcedo street-, 60 feet front on the first, by 120 feet in depth on the second.

The No. 91 forming the corner of Julia and Briqueterie streets—60 feet front on the first by 120 feet in depth on the second.

The No. 89—60 feet front on said Briqueterie street by 120 feet in depth.

The No. 88—60 feet front on said Briqueterie street by 120 feet in depth, its width diminishing in going to the rear.

The No. 90—60 feet front on said Julia street by 120 feet in depth.

The No. 49 forming the corner of Salcedo and Julia streets, having 60 feet front on the first by 120 feet in depth on the second.

The No. 50—60 feet front on Salcedo street by 120 feet in depth.

The No. 51—60 feet front on said Salcedo street by 120 feet in depth.

156 The No. 52—45 feet front on said Salcedo street by 150 feet in depth.

The No. 53—45 feet front on said Salcedo street by 150 feet in depth.

The No. 55—60 feet front on said Salcedo street by 120 feet in depth.

The No. 56—60 feet front on Girod street by 120 feet in depth.

The No. 54—60 feet front on said Girod street by 180 feet in depth.

The No. 48—60 feet front on said Girod street by 120 feet in depth.

The No. 46 forming the corner of Girod and Calalou street—60 feet front on the first, by 120 feet in depth on the second.

The No. 45—60 feet front on said Calalou street by 120 feet in depth.

The No. 44—45 feet front on said Calalou street by 150 feet in depth.

The No. 43—45 feet front on said Calalou street by 150 feet in depth.

The No. 42—60 feet front on said Calalou street by 120 feet in depth.

The No. 41—60 feet front on said Calalou street by 120 feet in depth.

The No. 40 forming the corner of Calalou and Julia streets, having 60 feet front on the first by 120 feet in depth on the second.

The No. 47—60 feet front on said Julia street by 180 feet in depth.

The No. 68, forming the corner of Girod and Salcedo street-, having 60 feet front on the first by 120 feet in depth on the second.

The No. 65—60 feet front on said Girod street by 120 feet in depth.

The No. 63—60 feet front on said Girod street by 150 feet in depth.

No. 58 forming the corner of Calalou and Girod street—60 feet front on the first by 120 feet in depth on the second.

The No. 59—60 feet front on said Calalou street by 120 feet in depth.

The No. 60—60 feet front on said Calalou street by 120 feet in depth.

The No. 61—60 feet front on said Calalou street by 120 feet in depth.

The No. 62 forming the corner of Calalou & Hevia street- —
157 60 feet front on the first, by 120 feet in depth on the second, and the No. 64—60 feet front on said Havia street by 150 feet in depth.

As all those lots stand without exception or reservation the purchasers declare to know them well and to be satisfied with them, and not to ask for any more ample description.

To have and to hold unto the said purchaser as their own property from now and forever. Those lots belong to the vendor, they having been adjudicated to him at the public sale made by Mr. Blaire Cenas, sheriff of the late county of Orleans by virtue of the seizure which Messrs. Alexander Baudin and Jean Lesse had obtained against the property of Mr. Jean Gravier the whole in conformity with the sheriff's deed of sale before Mr. Narcisse Broutin, a notary in this city dated the 27th of May, 1808.

The present sale is made after and in consideration of the price and sum of $20,000, in deduction whereof the purchasers have paid cash to the vendor the sum of ten thousand dollars in current money, counted and truly delivered within sight of the notary and witnesses undersigned of which acquittance.

As regards the ten thousand dollars remaining the purchasers oblige themselves *in solido* to pay the same to the vendor within one year from the date of this present by two notes of five thousand dollars, each payable at said date, one subscribed by Messrs. Thomas and David Urquhart and endorsed by Mr. Thomas L. Harman and the others, subscribed by the latter, and endorsed by the said Messrs. Thomas and David Urquhart, which said notes after being signed and paraphed *ne varietur* by the undersigned notary to identify

the same with these presents have been delivered to the said vendor who acknowledges the same and consents discharge for the same.

To secure the payment of said two notes the forty-five lots of ground hereinabove sold, are and shall remain affected and mortgaged by special privilege expressly reserved to the vendor.

Under the reserve of this privilege the vendor subrogates the purchaser in all the rights of ownership which he has and may have on the 45 lots herein conveyed consenting that the purchaser will be invested with the full ownership thereof. By reference to the certificate of the recorder dated this day there is no mortgage against the vendor on the lots hereinabove described.

Done and passed in the office at New Orleans the 15th of
158 the month of January of the year, 1818, in the presence of Messrs. Michel Fourcisy and Vincent Bilote witnesses who have signed with the parties and the said notary.

(Signed) MOULON.
T. & D. URQUHART.
THOMAS L. HARMON.
PHI. PEDESCLAUX, *Not. Pub.*

FOURCISY.
VT. BILOTE.

A true copy of the original on file in my office for reference. In faith whereof I have signed these presents and hereto affixed the seal of my office, at New Orleans, the first of May, 1839.

(Signed) LOUIS T. CAIRE, *Not. Pub.*

Document Marked No. 8, Being Agreement Between the Corporation of New Orleans and the New Orleans and Carrollton Railroad Company.

En la ville de la Nouvelle Orléans, Etat de la Louisiana a dix huit Juillet mil huit ans trente trois et dans la cinquante huitieme année de l'indépendence Americaine:

Pardevant Félix de Armas notaire public dûment commissioné pour la Paroisse d'Orléans, y residant et en presence des témoins ci-apres nommes et soussignes:

Ont Comparu:

Monsr Dominique François Burthe, demeurant en cette ville, agissant aux presentes en qualité de President de la "Compagnie du chemin a coulisses de la Nouvelle Orleans et de Carrolton" et un vertu d'un résolution de la dite Compagnie, priée dans sa seance du six Juin dernier, copie de laquelle resolution est et demeure ci-annéxée pour recours;

Et Monsr Denis Prieur, maire de cette ville de la Nouvelle Orléans, y residant, agissans pour et au nom de la corporation des Maire, Aldermen et habitans de cette ville, en vertu de deux résolutions du conseil de ville, prises dans sa seance du vingt neuf Mai dernier, et approuvées, le premier Juin dernier, par le dit maire; copies dûment certifiées des quelles resolutions sont et demuerant ci-annéxées pour recours;

Lesquels sieurs comparons conveinnent de ce quit suis:

La dite Compagnie du chemin a coulisses de la Nelle Orléans et de Carrolton céde et abandonne à la dite Corporation des
159 cette ville, dis maintenant et à toujours, sous la simple garantie de ses faite et promisses, ce accepté par le dit sieur Prieur pour la dite Corporation; 1^ent^ Une portion de têrre devant servir au prolongement de la rue Poydras, comprise entre les lettres A, B, C, & D, sur un plan fait pour Charles F. Zimpel, deputé voyer pour le faubourg Ste Marie, en date du quatre Mai dernier, lequel apres avoir été signé et paraphé *Ne Varietur* pour les sieurs comparans, le notaire, et les témoins soussignés est et demeure ci-annéxé pour recours; la dite portion de terrain fesans partie de l'ancien Bassin Gravier, maintenans la propriété de la dite Compagnie au moyen de l'acquisition qu'elle à faite suivant acte au rapport de Wm. Christy notaire public un cette ville, du quatorze Juin dernier de la Compagnie de Navigation d'Orléans;

Et 2^ent^ toute la portion de têrre nécessaire au prolongement de la rue Baronne, au travers du dit Bassin Gravier, dont elle fais aussi partie;

Et en considération des cession et abandon dont il viens d'être parlé, le dit sieur Denis Prieur, en sa dite qualité, abondonne a la Compagnie du chemin a coulisses, de la Nouvelle Orléans et de Carrollton, accepté pour le dit sieur Burthe pour la dite Compagnie, pendant tout le temps de la durée de sa charte, et sous la simple garantie des faits et promesses de la dite Corporation, la jouissance pleindit entiere des portions de têrre comprises entre les lettres E, F, G, H & K, L, M, N, au plan susdit, a la charge par la dite compagnie ainsi qui le dit sieur Burthe l'y oblige, en sa dite qualité de President, de les faire immediatement remblayer, et d'un transferer, du nouveau la jouissance à la dite Corporation, dans le cas ou le chemin à coulisses projeté en serait pas etabli et mis en operation dans les trois années qui suivront la date des resolutions ci-dessus mentionnées;

Au moyen de quoi, la dite Compagnie céde et transporte à la dite Corporation de cette ville, tous les droits de propriété, de garantie et autres qu'elle a et peut avoir sur les dites deux portions de terrain presentement cédées et abandonnees à la dite corporation, pour par elle, qui en est un bonne et due possession ainsi que le reconnait le dit Sieur Prieur es-qualites en jouir, faire et disposer en toute propriété en vertu des presentes;

Fait et passé en l'etude, à la Nouvelle Orleans les jour,
160 mois et an sur dits, en presence de Messrs. Ch^l^ Victor Foulon et Amédée Ducatel, témoins competens qui ont signé avec les comparans, at le notaire apres lecture faite.

Signé— D. PRIEUR, *Maire.*
BURTHE,
Pres't N. Orl. & C. R. R. C'y.
G. EUSTIS, *Avocat de la Ville.*
FÉLIX DE ARMAS, *Not. Pub.*

FOULON.
AMÉDÉE DUCATEL.

Pour copie conforme a la minute a trois Aôut mil huit cent trente trois

[SEAL.] (Signed) FÉLIX DE ARMAS, *Not. Pub.*

(Endorsed:) 18 Juillet, 1833. Conventions entre La Corporation et Le Chemin a coulisses de la Nouvelle Orléans et de Carrolton. "G." No. 15983. Filed 20 June, 1845. (Signed) T. Gilmore, d'y cl'k. No. 45374. Civil dist. court. City of N. O. *vs.* P. Werlein. Offered in evidence by pl't'f. Filed Dec. 19th, 1896. (Signed) Joe Garidel, d'y cl'k.

Translation of the Foregoing Document Marked No. 8.

In the city of New Orleans, State of Louisiana, this 18th of July, 1833, and the 58th year of the American Independence, before me, Felix de Armas, notary public, duly commissioned for the parish of Orleans, therein residing, and in the presence of the witnesses hereinafter named and undersigned, appeared, Mr. Dominique Francois Burthe, residing in this city, herein acting in his capacity as president of the New Orleans and Carrol-ton Railroad Company, by virtue of the resolution of said company adopted at their sitting of the 6th of June last, copy of which said resolution is hereto annexed for reference; and Mr. Denis Prieur, mayor of the city of New Orleans, therein residing, and acting for and in the name of the corporation of the mayor, aldermen and inhabitants of this city, by virtue of two resolutions of the city council, adopted at their sitting of the 29th of May last, and approved the first of June last by the said mayor, duly certified copies of said resolutions are hereto annexed for reference, which said appearers have agreed as follows, to wit:

The said New Orleans & Carrol-ton Railroad Company
161 cedes and abandons to the said corporation of this city of New Orleans from now and forever, under the simple guarantee of its own act and promises, this being accepted by the said Mr. Prieur for the said corporation: First—a portion of ground to be the prolongation of Poydras street comprised within the letters A, B, C & D on the plan made by Charles F. Zimple, deputy surveyor of the Faubourg St. Mary dated the fourth of May last, which said plan after being signed and paraphed *ne varietur* by the said appearers, notary and witnesses undersigned, remains hereto annexed for reference. The said portion of ground is a part of the old Gravier basin now property of the said company by the means of the acquisition it made thereof by act in the office of William Christy, a notary public in this city dated the 14th day of June last, from the Orleans Navigation Company; and secondly, all that portion of ground necessary to the prolongation of Baronne street across the said Gravier basin of which it also makes a part, and in consideration of the cession and abandonment aforesaid the said Mr. Denis Prieur in his capacity abandons to the New Orleans and Carrollton Railroad Company, which is accepted by the said Mr. Burthe for the said company during the whole term of the duration

of its charter, and under the simple guarantee of the act and promises of the said corporation, the enjoyment, full and entire, of the portions of ground comprised within the letters E, F, G, H, & K, L, M, N, on the above plan under the obligation by the said company, and the said Mr. Burthe in his said capacity of president hereby binds said company to cause the same to be immediately filled and to transfer anew the use thereof to the said corporation in case that said projected railroad should not be established and put in operation within the three years which will follow the date of the resolutions hereinbefore mentioned. By virtue of the foregoing the said company cedes and transfers to the said corporation of this city all the rights of property, warranty and others which it has and may have on the said two portions of ground herein ceded and abandoned to the said corporation, to be by it, which is in good and due possession thereof as is hereby acknowledged by the said Mr. Prieur in his said capacity to be enjoyed and disposed of in full ownership by virtue of these presents.

Done and signed in the office in the city of New Orleans,
162 the day, month and year aforesaid in the presence of Messrs. Ch's Victor Foulon and Amedee Ducatel, competent witnesses who have signed with the appearers and the notary after reading.

(Signed) D. PRIEUR, *Mayor.*
BURTHE,
Pres't N. O. & Carr. R. R. Co.
G. EUSTIS, *City Attorney.*
FELIX DE ARMAS, *Not. Pub.*

FOULON.
AMEDEE DUCATEL.

A true copy of the original this 3rd of August, 1833.

(Signed) FELIX DE ARMAS, *Not. Pub.*

Document Marked 9, Being Plan Showing the Situation of the Gravier Basin, with Its Environs and the Projected Route of the Carrollton Railroad, New Orleans, May 4th, 1833.

163 *Assignment of Errors.*

Supreme Court of La.

CITY OF NEW ORLEANS
vs.
PHILIP WERLEIN. } No. 12560.

Assignment of errors.

Now comes Philip Werlein, defendant and appellant in the above-entitled cause, and assigns the following errors of law appearing on the face of the record:

1. That the court *a qua* erred in rejecting the evidence offered by defendant to show the complete title of this defendant to the real property in controversy under the Constitution and laws of the United States and to prove his plea of *res judicata.*

2. That it is shown by the record that the real estate in controversy was seized under and by virtue of a writ of *fieri facias* issued on the 15th day of May, 1878, in the suit of John Klein *vs.* The City of New Orleans, in the circuit court of the United States for the eastern district of Louisiana, on a judgment rendered in said circuit court of the United States against the City of New Orleans, being suit No. 7801 of the docket of said court, said judgment having been rendered in said cause on May 2nd and signed on May 6th, 1876, and that the City of New Orleans brought a suit in the circuit court of the United States, in chancery, against the said John Klein to enjoin him from selling under his said judgment, said suit being No. 8461 of the docket of said court, and said bill was dismissed without qualification or reservation by the court; and the court erred in not holding the dismissal of said bill as *res*

164 *judicata*

3. That the court *a qua* erred in not holding that the city was estopped by said seizure by John Klein and the advertisement and sale of the property in controversy, and the injunction suit referred also by the answer of the city to an injunction of Philip Werlein *vs.* The City of New Orleans, No. 38752 of the docket of the civil district court for the parish of Orleans, and the continuous assessment of the property from the date of said sale in the name of defendants and of those from whom he derived title down to the present day.

4. That the lower court erred in deciding that the sale of the real property in controversy in this case, which sale was legally made under process of the United States circuit court for the fifth circuit and eastern district of Louisiana, in the suit of John Klein *vs.* The City of New Orleans, No. 7801 of the docket of the court, and which was contested by the city in the suit of The City of New Orleans *vs.* John Klein, in chancery, being an injunction suit to restrain said sale, was not a legal and valid sale, made by authority of a court having jurisdiction, and said ruling and decision of the lower court

is contrary and adverse to the Constitution and laws of the United States.

5. That the court *a qua* erred in holding that the property in controversy was dedicated to public use.

6. That the court *a qua* erred generally on the face of the record in deciding in favor of plaintiff and against defendant.

(Signed) EDWIN T. MERRICK, *Att'y.*

(Endorsed :) No. 12560. Supreme court. City of New Orleans *vs.* Philip Werlein. Assignment of errors. Filed June 22nd, 1897. (Signed) T. McC. Hyman, clerk.

Continuance.

(Extract from Minutes.)

NEW ORLEANS, WEDNESDAY, *November* 17*th*, 1897.

The court was duly opened pursuant to adjournment.

Present: Their Honors Francis T. Nicholls, chief justice; Joseph A. Breaux, Henry C. Miller, associate justices.

Absent: Lynn B. Watkins, Newton C. Blanchard, associate justices.

165 CITY OF NEW ORLEANS *vs.* PHILIP WERLEIN } No. 12560.

This case was called for trial; whereupon, on the motion of counsel for all parties in interest, the court ordered the case to be continued with preference.

Continuance.

(Extract from the Minutes.)

NEW ORLEANS, FRIDAY, *December* 31*st*, 1897.

The court was duly opened pursuant to adjournment.

Present: Their honors Francis T. Nicholls, chief justice; Lynn B. Watkins, Joseph A. Breaux, Henry C. Miller, Newton C. Blanchard, associate justice-.

CITY OF NEW ORLEANS *vs.* PHILIP WERLEIN. } No. 12560.

On motion of R. A. Tichenor, Esq., of counsel for the plaintiff, and upon suggesting that Mr. Edward T. Merrick, of counsel for the defendant, is ill and confined to his chamber—

It is ordered by the court that this cause, heretofore set down for hearing today, be continued with preference.

Continuance.

(Extract from the Minutes.)

NEW ORLEANS, FRIDAY, *January 28th*, 1898.

The court was duly opened pursuant to adjournment.

Present: Their honors Francis T. Nicholls, chief justice; Lynn B. Watkins, Joseph A. Breaux, Henry C. Miller, Newton C. Blanchard, associate justices.

CITY OF NEW ORLEANS
vs.
PHILIP WERLEIN. } No. 12560.

166 This cause came on this day to be heard and was argued by counsel. Mr. Rolla A. Tichenor opened for the plaintiff and appellee; Mr. Edwin T. Merrick replied for the defendant, appellant, and occupied the attention of the court until the hour of adjournment, when the court ordered the cause continued until tomorrow, Saturday, the 29th of January, instant, for resumption of argument.

Submission of Cause.

(Extract from the Minutes.)

NEW ORLEANS, SATURDAY, *January 29th*, 1898.

The court was duly opened pursuant to adjournment.

Present: Their honors Francis T. Nicholls, chief justice; Lynn B. Watkins, Joseph A. Breaux, Henry C. Miller, Newton C. Blanchard, associate justices.

CITY OF NEW ORLEANS
vs.
PHILIP WERLEIN. } No. 12560.

The trial of this case, continued from yesterday, Friday, the 28th day of January, instant, was this day resumed, and having heard argument from Mr. Edward T. Merrick, of counsel for the defendant, appellant, and from Mr. Samuel L. Gilmore, city attorney, on behalf of the plaintiff, appellee, who closed the argument, the court took the case under advisement upon the briefs for the parties in interest and the papers now on file.

Opinion of the Court.

UNITED STATES OF AMERICA,
State of Louisiana.

Supreme Court of the State of Louisiana.

NEW ORLEANS, MONDAY, *November 21st*, 1898.

The court was duly opened pursuant to adjournment.

Present: Their honors Francis T. Nicholls, chief justice; Lynn B.

Watkins, Joseph A. Breaux, Henry C. Miller, Newton C. Blanchard, associate justices.

His honor Mr. Justice Watkins pronounced the opinion and judgment of the court in the following case:

CITY OF NEW ORLEANS
vs.
PHILIP WERLEIN. } No. 12560.

167 Appeal from the civil district court, parish of Orleans.

The plaintiff seeks to recover the square of ground in the city of New Orleans which is bounded by Poydras, Carroll, Baronne, and Perdido streets, alleging same to be the property dedicated to public use and constituting a portion of the *Place Gravier*, in the ancient *Faubourg St. Mary*, and not susceptible of alienation, private ownership, or private possession, same being *extra commercia* and exclusively under the power and dominion of the sovereign.

The defendant alleges that said property was adjudicated to Andrew C. Lewis on the 25th of September, 1878, under an execution which was issued under a money judgment in the suit of John Klein *vs.* City of New Orleans, No. 7801, in the United States circuit court for the State of Louisiana, and that by various *mesne* conveyances the same was transferred to him, and upon which he founds his title and possession thereof. On these issues the case was tried and judgment pronounced in plaintiff's favor, and the defendant has appealed.

In conjunction with his answer, the defendant urged pleas of estoppel and *res adjudicata*, predicated upon the suit of the city, in which the marshal*l*'s sale was enjoined in the United States circuit court and the judgment thereof rejecting its demands, but same were by the judge *a quo* overruled, and to his ruling the defendant's counsel retained a bill of exceptions.

This statement of the pleadings suffices to show that it is conclusively admitted by the defendant that the City of New Orleans was possessed of a title to the property in dispute at the time of the marshal*l*'s sale to Lewis, and hence the sole question remaining for decision is whether or not the property was the subject of judicial alienation at that time.

The plaintiff puts its case upon its acquisition of the property as a *locus publicus* and the title from Gravier dedicating same to public use and the inalienability thereof on that account, and the contention of the defendant is that the public use of the property had been abandoned by the city many years antecedent to the seizure and sale of Klein, and was consequently the proper subject
168 of a judicial disposition, and to that end all of the defendant's parol proof was directed, though unsuccessfully. The averment of the plaintiff's petition is "that said sale by the United States marshal*l* to Andrew C. Lewis was and is absolutely null and void, and that no title or right whatever in and to said property passed by said sale to said Andrew C. Lewis or to the defendant

herein, who claims through *mesne* conveyances from said Adrew C. Lewis.

"That said property is property which was dedicated to public use long prior to the date of said marshal's sale by Bertrand and John Gravier, and forms part of the *Place Gravier*, in the Faubourg St. Mary, in this city, and that said property was at the date of said marshal's sale and *has ever* since been absolutely unsusceptible of alienation or private ownership, or of private possession, and that said Werlein's possession is illegal and in bad faith.

"Petitioner further avers that she is invested by law with the *administration and possession for the public benefit* of all property in this city (which is) dedicated to public use, and has the right to sue for the recovery of the possession of and to establish the title and right of use of the public to any such property."

The prayer of the petition conforms to the foregoing averments.

Counsel for the defendant places reliance chiefly upon his plea of *res adjudicata*, and advances the proposition that notwithstanding the fact of the inalienable character of the property in suit as a *locus publicus*, same having been *actually adjudicated* at marshal's sale, it has become an accomplished and incontestible fact which cannot be again controverted.

We make from counsel's brief the following extract, viz:

"I am well aware of certain authorities to the effect that property dedicated to public use cannot be sold under a judgment; but the court must bear in mind that this property has been already sold under a judgment, and that judgment has never been attacked to this day. To attack it a suit would have to be brought in the court that rendered it. It may be that the judgment was wrong, but it is nevertheless *res judicata* unless reversed or annulled.

"This was also the judgment of a court of the United States having jurisdiction of the case, and is its action to be disregarded and annulled by your honors after nearly twenty years of acqui-
169 escence? The decisions which say that the title to a *locus publicus* cannot be divested mean that it cannot be divested *if the proper proceedings are instituted to prevent it.*" (Our italics.)

We do not agree with counsel in that proposition, neither with regard to its application to the facts stated with reference to his plea of *res adjudicata* nor the law governing it.

The facts disclosed by the record are that Klein obtained a *money* judgment against the City of New Orleans in the United States circuit court, and thereunder caused an execution to issue and the property in suit to be seized, and same was subsequently sold to Andrew C. Lewis.

The instant suit attacks the validity of that sale, but does not question the legality of the judgment under and by virtue of which the sale was made.

Admitting that the judgment is and was perfectly valid and all proceedings thereunder perfectly formal and regular, the suit of the city declares that the purchaser acquired no title, and none was transferred to the defendant, for the reason that the property adjudi-

cated was *extra commercia* and inalienable under the execution of a judgment creditor.

That notwithstanding there was a valid judgment pronounced against the city for an incontestible debt in favor of Klein, yet the city, as judgment debtor, had no right, title, or *private* interest in the property which was the legitimate subject of seizure and sale under execution.

Consequently the divestiture of the title of the *public* does not in any manner depend upon the validity of the judgment or the regularity of the sale thereunder.

Indeed, counsel has altogether misinterpreted the defendant's plea of *res adjudicata* and estoppel, as same is not based upon the money judgment nor the sale thereunder. It is solely predicated upon the decree which was rendered in the *injunction suit* of the city, which sought to restrain the sale upon grounds different from those now assigned for the illegality of the sale.

The judge *a quo* states the grounds of that injunction suit very concisely, and we will reproduce same in lieu of a summary of our own, viz:

"1. That said Klein had caused his judgment to be registered in the office of the administrator of public accounts agreeably
170 to the provisions of act No. 5 of 1870, extra session, and had accepted and availed himself of the provision of that act as a means of realizing upon said judgment, and that said act prohibited the issuance of a writ of *fieri facias* upon any judgment so registered, and that said prohibition was binding on Klein.

"2. That Klein was not the owner of the judgment, but had transferred it to Lesassier and Binder."

"That the writ issued for a much larger sum than the balance due on said judgment."

Upon that statement it is quite evident that the city did not resist the execution on the ground that the property seized was not the legitimate subject of sale and inalienable.

Nor is that the defendant's contention, but that it was a defense which was susceptible of having been made in that case, and not having been made was presumably abandoned, and in consequence thereof was necessarily covered by said injunction suit and the decree of the United States circuit court against the city.

This, as we understand it, is the contention of defendant's counsel, and that is an altogether different proposition from the one above quoted from his brief.

And considering the plea of *res adjudicata* as it is presented in the pleadings, the judge *a quo* said:

"It does not appear to have been suggested in the pleadings that the property seized was a *locus publicus*, and upon the issues as presented the preliminary injunction was dissolved and complainant's bill dismissed, and the property was accordingly sold by the marshal to A. C. Lewis," &c.

And hence he held that the demand or cause of action stated in the injunction suit was not the same as that stated in the instant suit, and the plea of *res adjudicata* was rejected.

But taking the contention of the defendant's counsel as stated by him in his brief, viz., "that it cannot be disputed, that it is a principle of law universally admitted, that it is not only what is set up and shown in a petition that is barred by the plea of *res adjudicata*, but what *might have been* set up and shown" as well, and defendant's situation is not, in our opinion, improved.

171 The principle contended for is founded on considerations of equity that are held to obtain between private litigants; but we do not think them equally applicable to cases wherein questions of public interest or those which concern property vested in the public are at issue, as in the instant case.

On this question our learned brother of the lower court very appropriately observed:

"A different rule is applied by the courts to public corporations than that which is applied to individuals, and particularly is this true with respect to such corporations when acting as administrators or trustees of essentially public rights and public property."

A similar statement of the law was announced by this court in Canal Company *vs.* City, 44 A., 396, speaking through Mr. Justice Fenner as its organ, viz:

"Were ordinary litigants and private interests alone concerned, it would doubtless be too late to obtain relief, but we cannot permit the public interests represented by the city of New Orleans to suffer injury by such an inadvertence of counsel. Precedents justify us in extending such protection to municipal corporations with a more liberal allowance than in the case of private litigants.

"1 A., 215; 3 A., 230; 4 A., 130, 352; 7 A., 495."

But the decision so much relied upon by defendant's counsel does not go so far as his contention suggests, as will appear from the following extract, viz:

"So far as the *demand* involved in the action is concerned, the judgment has closed all controversy; its validity is no longer open to contestation, whatever might have been said or proved at the trial, for or against it.

"The judgment is not only conclusive as to what was actually determined respecting *said demand, but as to every matter which might have been brought forward and determined respecting it.*"

Davis *vs.* Brown, 94 U. S., 428.

Accepting this statement of the doctrine of *res adjudicata*, same is perfectly consistent with the contention of plaintiff's counsel and the opinion of the judge *a quo*, for it is to the effect only that the judgment pronounced is absolutely conclusive as to what was

172 actually determined respecting the *demand* of the petition, and also with regard to every other matter which might have been brought forward *concerning said demand.*

But in the city's injunction suit the demand related to the right of Klein to execute his judgment against the city at all; consequently everything which actually appertained to the demand or

might have been therein alleged concerning it are absolutely concluded by the judgment which was thereon pronounced.

But it did not affect the right of property in the land which had been thereunder seized and sold.

Indeed, the judgment was rendered against the city as a municipal corporation as the debtor of Klein, and Klein sought to execute it by the *sie*zure and sale of the property as that of the city, while in point of fact the title had been vested in the *public* by a dedication thereof to public use.

And in the present suit the city appears in the capacity of an administrator or trustee of this public use, a capacity altogether different from that in which it appeared in the injunction suit, and that fact is fatal to the pretensions of the defendant, for the reason that it is an essential to the maintenance of the plea of *res adjudicata* that the parties to the two suits must be not only the same, but that they shall appear in the same identical capacity.

The foregoing deductions necessarily lead to the conclusion that the judge *a quo* correctly rejected and disallowed the defendant's plea of *res adjudicata*.

The plea of estoppel by conduct on the part of city officials in causing the property in question to be assessed and taxes thereon collected as that of property in commerce and in other similar ways must be decided on similar principles.

Our predecessors in dealing with a similar question said in Municipality No. 2 *vs.* Orleans Cotton Press, 18 La., 272, viz:

"These allegations if proven would have considerable force if the plaintiffs sued in the right of the municipality or if they claimed anything belonging to the corporation; but they
173 only vindicate the right of the public to *loci publici*, things out of commerce, and in which the corporation represented by the plaintiffs can have no property. The dedication to public use, being once established, cannot be affected by any act of the municipal officers."

Not only is it a fact, which is inferentially admitted by the defendant, that the property in suit was dedicated to public use by Gravier, but that question was expressly decided and forever put at rest by our predecessors in Railroad Company *vs.* Municipality No. 2, 19 La., 62.

It is unquestionably true that, notwithstanding property has been dedicated to public use and has thus become consecrated to the public, and thereafter *extra commercia* and inalienable, same may lose that character by abandonment or *non-user*; but the abandonment or *non-user* must be clearly shown, or evidenced by acts and circumstances clearly indicative of such a purpose.

True it is, that the proof does show that certain persons, sustaining the relations of tenants and usufructuaries to the city, did erect and maintain upon the property in dispute an expensive building, and that the same was used for their private advantage and income; but those persons and others, who were permitted to so use the property, went into possession when it was in an untenantable condition and raised and improved it so that its value, as well as its

right of occupancy, became largely accelerated. But the proof shows that said buildings and improvements were destroyed by fire, and that the city urges no claim therefor. There is no proof of abandonment or *non-user*.

On reason and authority, we are of opinion that the conclusions of the judge *a quo* are correct.

Judgment affirmed.

Final Judgment.

(Extract from the Minutes.)

NEW ORLEANS, MONDAY, *November* 21*st*, 1898.

The court was duly opened pursuant to adjournment.

Present: Their honors Francis T. Nicholls, chief justice; Lynn B. Watkins, Joseph A. Breaux, Henry C. Miller, Newton C. Blanchard, associate justices.

His honor Mr. Justice Watkins pronounced the opinion and judgment of the court in the following case:

CITY OF NEW ORLEANS
vs.
PHILIP WERLEIN. } No. 12560.

174 On appeal from the civil district court for the parish of Orleans.

Judgment affirmed.

Petition for Writ of Error, with Supersedeas.

Supreme Court of Louisiana.

PHILIP WERLEIN, Plaintiff in Error,
vs.
CITY OF NEW ORLEANS, Defendant in Error. } No. 12506.

To the honorable the chief justice of the supreme court of the State of Louisiana:

And now comes Philip Werlein, of New Orleans, Louisiana, by Edwin T. Merrick and Albert Voorhies, his attorneys, and complains that in the record and proceedings, and also in the rendition of the judgment in a suit between The City of New Orleans, plaintiff, and Philip Werlein, defendant, in the supreme court of the State of Louisiana, being the highest court of law and equity of the said State in which a decision could be had in said suit, in which a final judgment was rendered on the — day of December, 1898, in said suit, wherein the defendant and plaintiff in error, Philip Werlein, assigns as error, among other things, that whereas The City of New Orleans, the defendant in error, on March 14th, 1895, instituted a suit in the civil district court for the parish of Orleans, State of Louisiana, against Philip Werlein, plaintiff in error, to recover the

following-described real estate situated in the city of New Orleans and State of Louisiana, viz;

A certain portion of ground, together with the improvements thereon, situated in the first district of said city, in the square bounded by Poydras, Perdido, Carroll, and Baronne streets and measuring one hundred and fifty (150) feet six (6) inches front on Baronne street, fifty-seven (57) feet five (5) inches front on Perdido street, one hundred and fifty (150) feet four and three-eighths ($4\frac{3}{8}$) inches on Carroll street, and fifty-seven (57) feet five (5)
175 inches and one line on the line nearest to Poydras street, stated in the said petition of defendant in error as sold by the United States marshal to one Andrew C. Lewis under and by virtue of a writ of *fieri facias* issued on the 15th day of May, 1878, in the suit of John Klein *vs.* The City of New Orleans, in the circuit court of the United States for the eastern district of Louisiana, on a judgment rendered in said circuit court of the United States against the said City of New Orleans, it being cause No. 7801 of said circuit court; and whereas said judgment was rendered against said City of New Orleans in said cause May 2nd and signed May 6th, 1876, and said property described in the petition of defendant in error in the possession of plaintiff in error as owner was described by the marshal, as stated in the petition of defendant in error, in his seizure thereof under his said writ of execution against the said City of New Orleans on the 16th day of March, 1878, which said lot was further described by said marshal in his said seizure as being subject to the usufruct of the New Orleans and Carrollton Railroad Company until the 9th day of February, 1883;

And whereas the defendant in error have admitted by *their* counsel in open court as well as in *their* petition, that the plaintiff in error holds a regular chain of title from and through Andrew C. Lewis, the said purchaser of the said land at said United States marshal's sale, down to and including this plaintiff in error;

And whereas the plaintiff in error, by a peremptory exception, pleaded in bar of said suit the following, viz:

That the right of said John Klein to seize and sell the said portion of land described in plaintiff's petition under his, said John Klein's, execution, issued on his said judgment against the City of New Orleans, in the circuit court of the United States, cause No. 7801, in order to satisfy said judgment so far as the proceeds of sale would go, was put at issue and contested by the said City of New Orleans against said John Klein by a bill in chancery in said U. S. circuit court, wherein a preliminary injunction was obtained by the said city, the complainant, against said John Klein, the defendant, and the said Klein having answered said bill of complaint, such proceedings were had in said chancery suit that the same came on to be heard on the whole case, and on the 19th day of June, 1878, a final decree and judgment was rendered by the said circuit
176 court, the same having jurisdiction, against said city and in favor of said John Klein, whereby said injunction against said John Klein, restraining him from selling said property under his said execution as the property of said city, was dissolved and

said complainant's bill was dismissed, and the right of said John Klein to proceed and sell said tract of land described in said petition under his said execution was recognized, affirmed, and established and became and is the thing adjudged (no appeal having been taken therefrom against said plaintiff), all of which will the more fully appear by a certified copy of said suit in chancery and the decree thereon, being cause No. 8461 of said circuit court of the United States for the eastern district of Louisiana.

And it being alleged by plaintiff and admitted that this defendant holds by *mesne* conveyances from said Andrew C. Lewis, this defendant pleads said decree in said chancery suit in said circuit court of the United States as *res judicata* and in bar of this suit and as a justification and authority and warrant to the said marshal of the United States, under the said writ of execution issued by said circuit court of the United States in said cause No. 7801, of said John Klein against The City of New Orleans, to proceed and offer at public sale the said property according to law, and to adjudicate the said property to said Andrew C. Lewis, the last and highest bidder, as he did on the 25th day of September, 1878, and said decree of the court of the United States and proceeding of the marshal of the United States thereunder give full validity and force under the laws of the United States to said marshal's sale, and to all subsequent purchasers holding title and conveyances thereunder down to and including this exceptor, Philip Werlein.

And whereas on the trial of said pleas and exception, viz, the 28th of May, 1898, in division "C" of the civil district court, and to maintain the issue on the part of the plaintiff in error under his said plea, he produced on the said trial of said plea and exception the exemplification of the said suit in chancery, No. 8461, brought by the City of New Orleans, in the said circuit court of the United States, eastern district of Louisiana, against said John Klein, to restrain and enjoin him, the said John Klein, from selling under his execution issued under his said judgment rendered by said court of the United States, suit No. 7801 of the docket of said court,
177 to satisfy the same by the sale of same described property, and the said defendant offered to read and give in evidence to the court, to support his said plea, the said exemplification of said suit in chancery, viz., the certified transcript of the bill in chancery, affidavit, order of the judge, subpœna, injunction, answer, and all other proceedings, the submission of the cause to the judge and decree of dismissal of the bill by an unqualified decree.

And the defendant's counsel contended to the court that the said decree in chancery in said chancery suit of the said City of New Orleans contesting the right of said John Klein to sell said described property seized on said execution against said City of New Orleans, being an absolute and unqualified decree of dismissal of said bill, was a bar to this suit and had the force of *res judicata* against said supposed ground of action now set up in plaintiff's petition and against plaintiff, or all other grounds of injunction then existing which might have been set up and urged by said city in her said

bill of complaint for said injunction against said Klein to prevent said marshal's sale under said execution.

And thereupon the counsel for plaintiff objected to the introduction and admission in evidence of the transcript of said suit in chancery, said complaint against John Klein, and the decree of dismissal therein on the following grounds:

1st. That the cause of action involved in said suit in chancery is not identical with the cause of action involved in this suit, as required for the plea by article 2286 of the Civil Code; that the sole and only issues decided in said chancery suit were whether John Klein, having recorded his judgment against the City of New Orleans in the office of the comptroller, pursuant to a statute of this State, and having elected that method of collecting his judgment, had not waived his right to pursue any other method of collection; whether said John Klein was the owner of said judgment, and, if so, whether he was estopped by having registered in the office of the comptroller a transfer of the same, and whether the judgment was not subject to certain credits, whereas the issue involved in this case is whether or not the property upon which it is alleged he levied execution is property subject to seizure and sale.

2nd. That the thing demanded in said bill in chancery is
178 not the same thing demanded in this suit, the prayer of said bill in chancery being for an order of injunction restraining said John Klein from selling the property herein in dispute, whereas the thing demanded in this case is a decree declaring the sale affected by said John Klein & Co. absolutely null and void.

And the court, being of the opinion that said cause of action in this case is not the same cause of action set up in said chancery case and not covered or barred by the force of said decree in chancery, refused to allow said transcript of said chancery suit to be offered or received in evidence on said issue on said plea and exception of *res judicata*.

And whereas this defendant, claiming rights to his said described property in his possession under and by virtue of said judgment, execution and marshal's sale, and decree in chancery, as aforesaid, offered to read and give in evidence to maintain his said issue on his said plea the document marked K, being an exemplification of said suit of said John Klein *vs.* The City of New Orleans, No. 7801 of said circuit court of the United States, and the judgment therein, and also the said execution and the said marshal's return thereon, and the adjudication of said described property to said Andrew C. Lewis.

And thereupon the plaintiff made the same objection as to the admissibility of said transcript K as to said transcript previously offered, and urged also that said testimony was irrelevant; and the court, being of the opinion that said objections were well taken as to said transcript of said suit No. 7801, judgment, execution, and return therein, refused to allow said transcript of said suit No. 7801 to be received and read in evidence.

And whereas the defendant also offered to read and give in evidence in support of his plea on said trial the act of sale of An-

drew C. Lewis of the property in controversy, bought by him at said marshal's sale, to Edward R. Hogan, November 30th, 1878, by act of sale passed before Michael Gernon, notary public, being document on file marked E; also the act of sale of the same property by said Edward R. Hogan to Bertrand Adoue, passed before A. Hero, Jr., notary public, February 8th, 1878, marked F; also the sale of the same property sold by said Bertrand Adoue and others to said Philip Werlein and P. P. Werlein, his father, since deceased,
179 said act of sale having been passed August 4th, 1881, before N. B. Trist, notary public, marked G, and the act of sale of said defendant's coheirs of their interest in said property to said defendant, P. Werlein, marked H; all and each of which said documents, offered by defendant to be read in evidence on the trial of the issue on said plea, were objected to by the said plaintiff's counsel on the same ground as the preceding documents; and the court, being of the same opinion, excluded all of said testimony of the defendant on said issue.

And whereas upon the trial of defendant and plaintiffs in error's plea of *res judicata*, claiming rights under said decree of said circuit court of the United States, in chancery, under judgment in said suit at law, No. 7801, in the same court, execution and United States marshal's sale to said Andrew C. Lewis, set up in said plea, and under said marshal's sale under the execution issued by the United States circuit court, the court having ruled out this testimony offered by the defendant, as aforesaid, and no other evidence having been offered by defendant and plaintiff in error; and

Whereas upon the trial of the cause upon the merits, it having been shown that the property aforesaid in contest in this case had been used entirely by the City of New Orleans for other purposes than those to which property dedicated to public use are devoted, and that said property had been leased by the city to private corporations and individuals, *e. g.*, for the use of the New Orleans and Carrollton Railroad Company and for a theatre to Christian and Louis Schneider, and a portion of said property declared to be included in the so-called dedication to public use for a cotton press, and said property declared to be dedicated to public use had never been so used, and it being proved that the defendant and his authors from the time of said sale by the United States marshal in said suit of John Klein *vs.* The City of New Orleans, No. 7801 of the docket of the United States circuit court, viz., the 25th day of September, 1878, has been in the undisturbed possession of Philip Werlein and his authors, and that the City of New Orleans have unceasingly collected from defendant and his authors the taxes due upon said property:

Now, therefore, the said judgment of said lower court is erroneous in excluding from the evidence on the said plea and exception
180 of estoppel and *res judicata*, according to the Constitution and laws of the United States, the exemplification of the said suit in chancery, No. 8461, brought by the City of New Orleans in the said circuit court of the United States to restrain and enjoin the said John Klein from selling under his said execution, issued under

his said judgment, No. 7801 of the docket of said court, to satisfy same by the sale of said property, which defendant, plaintiff in error, offered to give and read in evidence to sustain his said plea.

Second. And plaintiff in error, claiming rights to said described property in his possession under and by virtue of said judgment, execution, and marshal's sale, and decree in chancery aforesaid, offered to read and give in evidence to maintain his said issue on his said plea and exception, *offered to read and give in evidence* an exemplification of said suit of said Klein *vs.* The City of New Orleans, No. 7801 of the said circuit court of the United States, and the judgment therein, and also the said execution and the said marshal's return thereon, and the adjudication of said described property to Andrew C. Lewis; and the plaintiff in error also offered to read and give in evidence in support of said plea and exception the act of sale of Andrew C. Lewis of said property in controversy, bought by him at said marshal's sale, to Edward R. Hogan, of November 30th, 1878, by act of sale passed before Michael Gernon, notary public.

Also the act of sale of the same property by said Edward R. Hogan to Bertrand Adoue, passed before Andrew Hero, Jr., notary public, February 8th, 1879.

Also the act of sale of August 4th, 1881, of the same property by Bertrand Adoue to Philip Werlein, plaintiff in error, and P. P. Werlein, his father, since deceased, before N. B. Trist, notary public.

And the act of sale of his coheirs to the plaintiff in error of their interest in the property which they inherited of the said P. P. Werlein jointly with the plaintiff in error; and the said lower court erred against and in violation of the Constitution and laws of the United States and the authority and powers of the courts thereof in excluding said evidence and in refusing to give effect thereto.

181 Third. The plaintiff in error has a constitutional, just right to the property in controversy in this cause by virtue of the said sale under the judgment, execution, and marshal's sale in suit No. 7801 of the United States, and the City of New Orleans having brought said execution and marshal's sale thereunder in the chancery suit No. 8461, aforesaid, entitled "City of New Orleans *vs.* John Klein," to restrain and enjoin said Klein from selling under his said execution issued under his said judgment, rendered in said court of the United States, No. 7801 of the docket, to satisfy same, the property in controversy, and said injunction suit of the City of New Orleans against John Klein having been dismissed by said circuit court of the United States having jurisdiction, and said decree of dismissal not being appealed from, and having become final under the Constitution and laws of the United States, and the lower court erred in violation of the Constitution and laws of the United States, which have been called in question by said State court, in overruling the plea and exception of *res judicata*, and in deciding adversely to the title of plaintiff in error under the said judgment, execution, marshal's sale, and under said decree in chancery, a duly constituted court of the United States, against the City of New Orleans.

Fourth. That the said property in controversy having been used

by the City of New Orleans for many years for private purposes inconsistent to dedication to public use, as claimed by the said defendant in error, and having been legally sold to Andrew C. Lewis, the author of this plaintiff in error, and said Lewis and all intervening purchasers, as well as the plaintiff in error, having been left in peaceable possession of the property by the City of New Orleans, which acquiesced in the judgment of the said circuit court of the United States in suit No. 8461 and 7801 aforesaid, and having paid to the State of Louisiana and to the defendant in error, The City of New Orleans, large sums of money for taxes, the lower court erred in not sustaining the plea of estoppel filed by this plaintiff in error.

All of which appears in the record and proceedings in said
182 suit. Manifest error has happened, to the great damage of Philip Werlein.

Wherefore he prays for the allowance of a writ of error, to operate — a supersedeas, and such other process as may cause the same to be corrected by the Supreme Court of the United States.

(Signed) ALBERT VOORHIES, *Att'y.*
(Signed) EDWIN T. MERRICK.

Order.

Let the prayer of the foregoing petition be granted, and let a writ of error, to operate as a supersedeas, be allowed, as prayed for, upon petitioner furnishing bond, with solvent surety, in the sum of one thousand dollars, conditioned as the law directs.

New Orleans, December 10, 1898.

(Signed) FRANCIS T. NICHOLLS,
Chief Justice of Supreme Court of the State of Louisiana.

(Endorsement on petition:) No. 12560. Supreme court of Louisiana. Philip Werlein, plaintiff in error, *vs.* City of New Orleans, defendant in error. Petition for writ of error, with supersedeas. Filed Dec'r 10, 1898. (Signed) T. McC. Hyman, clerk.

Assignment of Errors.

PHILIP WERLEIN, Plaintiff in Error,
vs.
CITY OF NEW ORLEANS, Defendant in Error. } No. 12560.

To wit, on the — day of ——, in the year of our Lord eighteen hundred and ninety-eight, at the October term of eighteen hundred and ninety-eight, the Supreme Court of the United States, in the city of Washington and District of Columbia, comes the said Philip Werlein and says that in the record and proceedings in the above-entitled matter there is manifest error, in this, viz:

First. That whereas The City of New Orleans, the defendant in

error, on March 14th, 1895, instituted a suit in the civil dis-
183 trict court for the parish of Orleans, State of Louisiana, against Philip Werlein, plaintiff in error, to recover the following-described real estate situated in the city of New Orleans and State of Louisiana, viz:

A certain portion of ground, together with the improvement thereon, situated in the first district of said city, in the square bounded by Poydras, Perdido, Carroll, and Baronne streets, and measuring one hundred and fifty (150) feet six (6) inches front on Baronne street, fifty-seven (57) feet five (5) inches front on Perdido street, one hundred and fifty (150) feet four and three-eighths (4⅜) inches on Carroll street, and fifty-seven (57) feet five inches and one line on the line nearest to Poydras street, stated in the said petition of defendant in error as sold by the United States marshal to one Andrew C. Lewis under and by virtue of a writ of *fieri facias*, issued on the 15th day of May, 1878, in the suit of John Klein *vs.* The City of New Orleans, in the circuit court of the United States for the eastern district of Louisiana, on a judgment rendered in said circuit court of the United States against the said City of New Orleans, it being cause No. 7801 of said circuit court; and whereas said judgment was rendered against said City of New Orleans in said cause May 2nd and signed May 6th, 1876, and said property described in the petition of defendant in error, in the possession of plaintiff in error as owner, was described by the marshal, as stated in the petition of defendant in error, in his seizure thereof under his said writ of execution against the said City of New Orleans on the 16th day of March, 1878; which said lot was further described by said marshal in his said seizure as being subject to the usufruct of the New Orleans and Carrollton Railroad Company until the 9th day of February, 1883;

And whereas the defendants in error have admitted, by their counsel in open court, as well as in their petition, that the plaintiff in error holds a regular chain of title from and through Andrew C. Lewis, the said purchaser of the said land at said United States marshal's sale, down to and including this plaintiff in error;

And whereas the plaintiff in error, by peremptory exception, pleaded in bar of said suit the following, viz:

That the right of said John Klein to seize and sell the said portion
of land described in plaintiff's petition under his, said John
184 Klein's, execution issued on his said judgment against the City of New Orleans in the circuit court of the United States, cause No. 7801, in order to satisfy said judgment, so far as the proceeds of sale would go, was put at issue and contested by the said City of New Orleans against said John Klein by a bill in chancery in said U. S. circuit court, wherein a preliminary injunction was obtained by the said city, the complainant, against said John Klein, the defendant, and the said Klein having answered said bill of complaint, such proceedings were had in said chancery suit that the same came on to be heard on the whole case, and on the 19th day of June, 1878, a final decree and judgment was rendered by the said circuit court, the same having jurisdiction, against said city

and in favor of said John Klein, whereby said injunction against said John Klein, restraining him from selling said property under his said execution as the property of said city, was dissolved, and said complainant's bill was dismissed, and the right of said John Klein to proceed and sell said tract of land described in said petition under his said execution was recognized, affirmed, and established and became and is the thing adjudged (no appeal having been taken therefrom) against said plaintiff; all of which will the more fully appear by a certified copy of said suit in chancery and the decree thereon, being cause No. 8461 of said circuit court of the United States for the eastern district of Louisiana.

And it being alleged by plaintiff and admitted that this defendant holds by *mesne* conveyances from said Andrew C. Lewis, this defendant pleads said decree in said chancery suit in said circuit court of the United States as *res judicata* and in bar of this suit and as a justification and authority and warrant to the said marshal of the United States under the said writ of execution issued by said circuit court of the United States in said cause No. 7801, of said John Klein against The City of New Orleans, to proceed and offer at public sale the said property according to law, and to adjudicate the said property to said Andrew C. Lewis, the last and highest bidder, as he did on the 25th day of September, 1878; and said decree of the court of the United States and proceeding of the marshal of the United States thereunder give full validity and force under the laws of the United States to said marshal's sale and to all subsequent
185 purchasers holding title and conveyances thereunder down to and including this exceptor, Philip Werlein.

And whereas on the trial of said pleas and exception, viz., the 28th of May, 1898, in division "C" of the civil district court, and to maintain the issue on the part of the plaintiff in error under his said plea, he produced on the said trial of said plea and exception the exemplification of the said suit in chancery, No. 8461, brought by the City of New Orleans in the said circuit court of the United States, eastern district of Louisiana, against said John Klein to restrain and enjoin him, the said John Klein, from selling under his said execution issued under his said judgment rendered by said court of the United States, suit No. 7801 of the docket of said court, to satisfy the same by the sale of same described property, and the said defendant offered to read and give in evidence to the court, to support his said plea, the said exemplification of said suit in chancery, viz., the certified transcript of the bill in chancery, affidavit, order of the judge, subpœna, injunction, answer, and all other proceedings, the submission of the cause to the judge, and decree of dismissal of the bill by an unqualified decree, said transcript or exemplification of said chancery suit being marked 1.

And the defendant's counsel contended to the court that the said decree in chancery in said chancery suit of the said City of New Orleans contesting the right of said John Klein to sell said described property seized on said execution against said City of New Orleans, being an absolute and unqualified decree of dismissal of said bill, was a bar to this suit and had the force of *res judicata* against said

supposed ground of action now set up in plaintiff's petition and against plaintiff, or all other grounds of injunction then existing which might have been set up and urged by said city in her said bill of complaint for said injunction against said Klein to prevent said marshal's sale under said execution.

And thereupon the counsel for plaintiff objected to the introduction and admission in evidence of the transcript of said suit in chancery, said complaint against John Klein, and the decree of dismissal therein on the following grounds:

1st. That the cause of action involved in said suit in chancery is not identical with the cause of action involved in this suit, as required for the plea by article 2286 of the Civil Code; that
186 the sole and only issues decided in said chancery suit were whether John Klein, having recorded his judgment against the City of New Orleans in the office of the comptroller, pursuant to a statute of this State, and having elected that method of collecting his judgment, had not waived his right to pursue any other method of collection; whether said John Klein was the owner of said judgment, and, if so, whether he was estopped by having registered in the office of the comptroller a transfer of the same, and whether the judgment was not subject to certain credits, whereas the issue involved in this case is whether or not the property upon which it is alleged he levied execution is property subject to seizure and sale.

2nd. That the thing demanded in said bill in chancery is not the same thing demanded in this suit, the prayer of said bill in chancery being for an order of injunction restraining said John Klein from selling the property herein in dispute, whereas the thing demanded in this case is a decree declaring the sale affected by said John Klein & Co. absolutely null and void.

And the court, being of the opinion that said cause of action in this case is not the same cause of action set up in said chancery case and not covered or barred by the force of said decree in chancery, refused to allow said transcript of said chancery suit, being Exhibit 1, to be offered or received in evidence on said issue on said plea and exception of *res judicata*.

And whereas this defendant, claiming rights to his said described property in his possession under and by virtue of said judgment, execution, and marshal's sale, and decree in chancery, as aforesaid, offered to read and give in evidence to maintain his said issue on his said plea the document marked K, being an exemplification of said suit of said John Klein *vs.* The City of New Orleans, No. 7801 of said circuit court of the United States, and the judgment therein, and also the said execution and the said marshal's return thereon, and the adjudication of said described property to said Andrew C. Lewis.

And thereupon the plaintiff made the same objection as to the admissibility of said transcript K as to said transcript I, and urged also that said testimony was irrelevant; and the court, being of the opinion that said objections were well taken as to said transcript of

said suit No. 7801, judgment, execution, and return therein,
187 refused to allow said transcript of said suit No. 7801, marked K, to be received and read in evidence.

And whereas the defendant also offered to read and give in evidence in support of his plea on said trial the act of sale of Andrew C. Lewis of the property in controversy bought by him at said marshal's sale to Edward R. Hogan November 30th, 1878, by act of sale passed before Michael Gernon, notary public, being document on file marked E; also the act of sale of the same property by said Edward R. Hogan to Bertrand Adoue, passed before A. Hero, Jr., notary public, February 8th, 1879, marked F; also the sale of the same property sold by said Bertrand Adoue and others to said Philip Werlein and P. P. Werlein, his father, since deceased, said act of sale having been passed August 4th, 1881, before N. B. Trist, notary public, marked G, and the act of sale of said defendant's coheirs of their interest in said property to said defendant, P. Werlein, marked H, all and each of which said documents offered by defendant to be read in evidence on the trial of the issue on said plea were objected to by the said plaintiff's counsel on the same ground as the preceding documents; and the court, being of the same opinion, excluded all of said testimony of the defendant on said issue.

And whereas upon the trial of defendant and plaintiffs in error's plea of *res judicata*, claiming rights under said decree of said circuit court of the United States, in chancery, under judgment in said suit at law No. 7801, in the same court, execution and United States marshal's sale to said Andrew C. Lewis, set up in said plea, and under said marshal's sale under the execution issued by the United States circuit court, the court having ruled out this testimony offered by the defendant, as aforesaid, and no other evidence having been offered by defendant and plaintiff in error; and

Whereas upon the trial of the cause upon the merits it having been shown that the property aforesaid in contest in this case had been used entirely by the City of New Orleans for other purposes than those to which property dedicated to public use are devoted, and that said property had been leased by the city to private corporations and individuals, *e. g.*, for the use of the New Orleans and Carrollton Railroad Company, and for a theatre to Christian and Louis Schneider, and a portion of said property declared to
188 be included in the so-called dedication to public use for a cotton press, and said property declared to be dedicated to public use had never been so used, and it being proved that the defendant and his authors, from the time of said sale by the United States marshal in said suit of John Klein *vs.* The City of New Orleans, No. 7801 of the docket of the civil district court, viz., the 25th day of September, 1878, has been in the undisturbed possession of Philip Werlein and his authors, and that the City of New Orleans have unceasingly collected from defendant and his authors the taxes due upon said property:

Now, therefore, the said judgment of said lower court is erroneous in excluding from the evidence on the said plea and exception of estoppel and *res judicata*, according to the Constitution and laws

of the United States, the exemplification of the said suit in chancery, No. 8461, brought by the City of New Orleans in the said circuit court of the United States to restrain and enjoin the said John Klein from selling under his said execution, issued under his said judgment No. 7801 of the docket of said court, to satisfy same by the sale of said property, which defendant, plaintiff in error, offered to give and read in evidence to sustain his said plea.

Second. And plaintiff in error, claiming rights to said described property in his possession under and by virtue of said judgment, execution, and marshal's sale and decree in chancery aforesaid, offered to read and give in evidence, to maintain his said issue on his said plea and exception, *offered to read and give in evidence* an exemplification of said suit of said Kline *vs.* The City of New Orleans, No. 7801 of the said circuit court of the United States, and the judgment therein, and also the said execution and the said marshal's return thereon, and the adjudication of said described property to Andrew C. Lewis; and the plaintiff in error also offered to read and give in evidence in support of said plea and exception the act of sale of Andrew C. Lewis of said property in controversy, bought by him at said marshal's sale, to Edward R. Hogan, of November 30th, 1878, by act of sale passed before Michael Gernon, notary public.

Also the act of sale of the same property by said Edward R. Hogan to Bertrand Adoue, passed before Andrew Hero, Jr., notary public, February 8th, 1879.

189 Also the act of sale of August 4th, 1881, of the same property by Bertrand Adoue to Philip Werlein, plaintiff in error, and P. P. Werlein, his father, since deceased, before N. B. Trist, notary public;

And the act of sale of his coheirs to the plaintiff in error of their interest in the property which they inherited of the said P. P. Werlein jointly with the plaintiff in error; and the said lower court erred against and in violation of the Constitution and laws of the United States and the authority and powers of the courts thereof in excluding said evidence and in refusing to give effect thereto.

Third. The plaintiff in error has a constitutional, just right to the property in controversy in this cause by virtue of the said sale of same under the judgment, execution, and marshal's sale in suit No. 7801 of the United States —, and the City of New Orleans having brought said execution and marshal's sale thereunder in the chancery suit No. 8461 aforesaid, entitled "City of New Orleans *vs.* John Klein," to restrain and enjoin said Klein from selling under his said execution issued under his said judgment rendered in said court of the United States, No. 7801 of the docket, to satisfy same, the property in controversy, and said injunction suit of The City of New Orleans against John Klein having been dismissed by said circuit court of the United States having jurisdiction, and said decree of dismissal not being appealed from and having become final under the Constitution and laws of the United States, and the lower court erred in violation of the Constitution and laws of the United States which have been called in question by said State court in

overruling the plea and exception of *res judicata* and in deciding adversely to the title of plaintiff in error under the said judgment, execution, marshal's sale, and under said decree in chancery, a duly constituted court of the United States, against the City of New Orleans.

Fourth. That the said property in controversy having been used by the City of New Orleans for many years for private purposes inconsistent to dedication to public use, as claimed by the said defendant in error, and having been legally sold to Andrew C. Lewis, the author of this plaintiff in error, and said Lewis and all intervening purchasers, as well as the plaintiff in error, having been left
190 in peaceable possession of the property by the City of New Orleans, which acquiesced in the judgment of the said circuit court of the United States in suit No. 8461 and 7801 aforesaid, and having paid to the State of Louisiana and to the defendant in error, The City of New Orleans, large sums of money for taxes, the lower court erred in not sustaining the plea of estoppel filed by this plaintiff in error.

Fifth. The lower court erred in its judgment and conclusions on the entire case, and in rendering a judgment against him and in favor of defendant in error, The City of New Orleans.

(Signed) ALBERT VOORHIES, *Att'y.*
(Signed) EDWIN T. MERRICK, *Att'y.*

(Endorsed:) No. 12560. Supreme court of Louisiana. Philip Werlein, plaintiff in error, *vs.* City of New Orleans, defendant in error. Assignment of errors. Filed Dec'r 10, 1898. (Signed) T. McC. Hyman, clerk.

Bond for Writ of Error.

Know all men by these presents that we, Philip Werlein, as principal, and Edwin T. Merrick, as surety, are held and firmly bound unto the City of New Orleans in the full and just sum of one thousand dollars, to be paid to the said City of New Orleans, their certain attorney or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 10th day of December, in the year of our Lord one thousand eight hundred and ninety-eight.

Whereas lately, at a term of the supreme court of the State of Louisiana, holding session in and for the State of Louisiana, at New Orleans, in a suit depending in the supreme court, wherein The City of New Orleans is plaintiff and Philip Werlein defendant, judgment was rendered against Philip Werlein, defendant, and in favor of The City of New Orleans, the plaintiff, and the said Philip Werlein having obtained a writ of error, to operate as a supercedeas, and
191 filed a copy thereof in the clerk's office in the said supreme court to reverse the judgment in the aforesaid suit, and a citation directed to the said City of New Orleans, citing and admonishing it to be and appear at the opening of the Supreme Court of

the United States, to be held at Washington, within thirty (30) days from the granting of the writ of error:

Now the condition of the above obligation is such that if the said Philip Werlein shall prosecute his writ to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) PH. WERLEIN, [L. S.]
p. p. B. P. WERLEIN.
(Do.) EDWIN T. MERRICK. [L. S.]

Approved.
New Orleans, Dec'r 10, 1898.
(Signed) FRANCIS T. NICHOLLS,
Chief Justice of Louisiana.

STATE OF LOUISIANA, *Parish of Orleans,* } *ss:*

Personally appeared Edwin T. Merrick, who, being duly sworn, deposes and says that he is the surety on the within bond; that he resides in New Orleans, State of Louisiana, and is worth the full sum of one thousand dollars over and above all his debts and liabilities and property exempt from execution.

(Signed) EDWIN T. MERRICK.

Subscribed and sworn before me, at the city of New Orleans, this tenth day of December, 1898.

(Signed) T. McC. HYMAN,
[SEAL.] *Clerk Supreme Court of the State of Louisiana.*

(Endorsed:) No. 12560. Supreme court of Louisiana. Philip Werlein, plaintiff in error, *vs.* City of New Orleans, defendant in error. Bond for writ of error. Filed Dec'r 10, 1898. (Signed) T. McC. Hyman, clerk.

192 *Copy of Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit, between The City of New Orleans and Philip Werlein, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction

of the clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Philip Werlein, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within 30 days from the date hereof, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

193 Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 12th day of December, in the year of our Lord one thousand eight hundred and ninety-eight.

(Signed) E. R. HUNT,
[SEAL.] *Clerk of the Circuit Court of the United States for the Eastern District of Louisiana.*

Allowed by—
——.

No. 12560. Philip Werlein, plaintiff in error, *versus* City of New Orleans, defendant in error. Writ of error. Copy of a writ of error lodged in the clerk's office of the clerk of the supreme court of the State of Louisiana, in pursuance of the statute in such cases made and provided, this 12th day of December, one thousand eight hundred and ninety-eight. (Signed) Albert Voorhies, (Do.) Edwin T. Merrick, attorneys of plaintiff in error. Filed Dec'r 12, 1898. (Signed) T. McC. Hyman, clerk.

Agreement as to Record No. 38752.

CITY OF NEW ORLEANS
vs.
PHILIP WERLEIN. } No. 12560.

It is understood and agreed between counsel in this case that the record No. 38752, entitled Philip Werlein against The City of New Orleans, shall be copied in evidence and used in evidence in the Supreme Court of the United States in this case.

(Signed) EDWIN T. MERRICK.
(Do.) R. A. TICHENOR.

(Endorsed:) No. 12560. Supreme court of Louisiana. City of New Orleans *vs.* Philip Werlein. Agreement as to record 38752. Filed Dec. 27th, 1898. (Signed) Paul E. Mortimer, dep. clerk.

194 *Petition.*

PHILIP WERLEIN
vs.
CITY OF NEW ORLEANS. } No. 38752.

To the honorable the civil district court for the parish of Orleans:

The petition of Philip Werlein, residing in the parish of Orleans and State of Louisiana, respectfully represents:

That your petitioner is the owner and in possession of a certain lot of ground in the first district, in square No. 231, bounded by Perdido, Carroll, Baronne, and Poydras streets. Said lot of ground measures 57 feet front on Perdido street by 150 feet in depth on Baronne and Carroll streets and forms the corners of Perdido, Baronne, and Carroll streets.

Your petitioner shows that he acquired one undivided one-half interest in said property from Bertrand Adore & others by an authentic act before N. B. Trist, a notary public of this city, passed on Aug. 4th, 1881, and recorded in conveyance office, Book 114, folio 578.

Your petitioner further shows that Peter Werlein at said date acquired the other one undivided half interest in said property; that Peter Werlein died on the 17th day of Aug., 1885, and that his one undivided half interest became vested in Shepard Halsey Werlein, Miss Mary Werlein, and Lila Werlein, wife of A. B. Ware, and your petitioner, as the heirs at-law of Peter Werlein, in the amount of one undivided eighth interest each.

That on Aug. 7th, 1886, your petitioner acquired from his said coheirs their three undivided one-third interests in and to said property by an act in authentic form passed on said — day of —— before N. B. Trist, notary public, in this city, and recorded in conveyance office, Book 114, folio 578; all of which will more fully and at large appear by reference to said acts of purchase, to be hereafter annexed to this petition and made part hereof for greater certainty.

Your petitioner shows that his said above-described prop-
195 erty was illegally and wrongfully assessed for taxes for the year 1887 in the name of Peter Werlein and Philip Werlein jointly, and that the City of New Orleans has advertised petitioner's property for sale under said illegal and void assessment for a balance of tax for $180.00 and int. claimed by the city; all of which will more fully and at large appear by reference to a copy of the advertisement to sell said property on April 15th, 1893, taken from the Daily Item, a newspaper published in New Orleans, of April 4th, 1893, and annexed to this petition for greater certainty.

That a sale under this said illegal assessment will disturb petitioner in the actual possession and ownership of real estate which plaintiff has owned and possessed in full ever since August 7th, 1886.

Your petitioner shows that the sale of petitioner's property under

said illegal and void assessment would be injurious to petitioner's rights, and that a writ of injunction is necessary to protect petitioner's rights.

Wherefore, the annexed bond and affidavit considered, your petitioners pray that a writ of injunction issue in this case prohibiting the City of New Orleans from selling a certain lot of ground in the 1st district of the city of New Orleans, designated as lot No. 1, in square No. 231, bounded by Perdido, Baronne, Carroll, and Poydras streets, said lot of ground measuring 57 feet front on Perdido street by 150 feet in depth on Baronne street and forming the corners of Perdido & Baronne & Perdido & Carroll streets; that said assessment thereon be declared illegal, null, and void, and the writ of injunction be made perpetual, and for costs and such further and general relief as law, equity, and the nature of the case may require.

(Signed) MERRICK & MERRICK, *Att'ys.*

Personally came and appeared before me Philip Werlein, plaintiff in this case, to me personally known, who, being first duly sworn, deposeth and says that all the allegations in the foregoing petition are true and correct.

(Signed) PH. WERLEIN.

Sworn to and subscribed before me this 12th day of April, 1893.

[SEAL.] (Signed) EDWIN T. MERRICK, JR., *N. P.*

196 *Order Endorsed on Petition.*

Let a writ of injunction issue as herein prayed for and according to law upon petitioner furnishing bond in the sum of one hundred and eighty dollars, conditioned as the law requires.

New Orleans, April 13th, 1893.

(Signed) TH'S C. W. ELLIS, *Judge.*

(Endorsed:) No. 38752. Civil district court, docket 5. Philip Werlein *vs.* City of New Orleans. Petition, affidavit, bond, & advertisement. Filed April 13, '93. (Signed) Geo. W. Prados, d'y cl'k.

Advertisement of Tax Sale Referred to in Foregoing Petition.

Werlein, Peter and Philip—10824:

For city taxes for the year 1887, amounting to	$505.00
Less, paid on September 10, 1887.....	325.
Balance due	$180.

A certain lot of ground in the first district of the city of New Orleans, designated as lot No. 1, in square No. 231, bounded by Perdido, Baronne, Carroll, and Poydras streets; said lot of ground measures 57 feet front on Perdido street by 150 feet in depth on Baronne and Carroll streets and forms the corners of Perdido, Baronne, and Carroll streets.

Bond of Injunction.

Know all men by these presents that we, Philip Werlein, as principal, and Henry Ginder, as security, of the city of New Orleans and State of Louisiana, are held and firmly bound unto the City of New Orleans in the sum of one hundred and eighty dollars, lawful money of the United States of America, to be paid to said *said* City of New Orleans, heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves and each of us, by himself and each of our heirs, executors, administrators, firmly by these presents.

Sealed with our seals and dated the 12th day of April, in the year of our Lord 1893.

197 Whereas the said Philip Werlein has this day presented a petition to the honorable the civil district court for the parish of Orleans praying for a writ of injunction:

Now, the condition of the above obligation is that we, the above-bound Philip Werlein and —— ——, will well and truly pay to the said City of New Orleans, the defendant in said injunction, all such damages as it may recover against us in case it should be decided that the injunction was wrongfully obtained.

(Signed) PH. WERLEIN. [SEAL.]
H. GINDER. [SEAL.]

Signed, sealed, and delivered in presence of—
—— ——.

(Endorsement on bond:) No. 38752. Civil district court, Ph. of Orleans. Philip Werlein *vs.* City of New Orleans. Bond. Filed April 13th, 1893. (Signed) Jas. D. Rankin, d'y cl'k.

Citation.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, in the City of New Orleans.

PHILIP WERLEIN
versus
CITY OF NEW ORLEANS. } No. 38752.

To the City of New Orleans, through its proper officer, New Orleans:

You are hereby summoned to comply with the demand contained in the petition, of which copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the civil district court for the parish of Orleans, within ten days after the service thereof.

Witness the Honorables F. A. Monroe, N. H. Rightor, T. C. W.

Ellis, Fred D. Kind, Geo. H. Theard, judges of the said court, this 13th day of April, in the year of our Lord 1893.

[SEAL.] (Signed) JAS. D. RANKIN,
Deputy Clerk.

Court-house, opposite Jackson square.

198 *Return of Sheriff on Citation.*

Received Thursday, Apr. 13, 1893, and on the same day, month, and year I served a copy of the within citation & accompanying petition on The City of New Orleans, defendant herein named, by leaving the same at the city hall, in the mayor'- office, in the hands of Clarke Steen, his chief clerk, the mayor, John Fitzpatrick, being absent from his office at time of said service.

Sheriff's fees, $1.50.

Returned same day.

(Signed) JAMES GARVEY,
Deputy Sheriff.

(Endorsed:) No. 38752. Civil district court for the parish of Orleans. Philip Werlein *vs.* City of New Orleans. Docket 5. Merrick and Merrick, attorney-. Copy of petition and citation inside, to be served on the City of New Orleans through its proper officer. N. O. Filed Ap'l 14th, 1893. (Signed) Jas. D. Rankin, d'y cl'k.

Writ of Injunction.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

PHILIP WERLEIN
versus
CITY OF NEW ORLEANS. } No. 38752.

The State of Louisiana to the City of New Orleans, through its proper officer, New Orleans, Greeting:

You are hereby commanded, enjoined, and prohibited, in the name of the State of Louisiana and of the civil district court for the parish of Orleans, from selling or offering for sale for the taxes of the year 1887 the following-described property, to wit: a certain lot of ground in the first district of this city, in square No. 231, bounded by Perdido, Carroll, Baronne, & Poydras Sts.; said lot of ground measures 57 feet front on Perdido St. by 150 feet in depth on Baronne and Carroll Sts., and forms the corners of Perdido, Baronne, and Carroll Sts., said property having been advertised
199 to be sold by you for said taxes under the advertisement number 10824.

And you are so to remain enjoined and prohibited until the further order of this court.

Witness the Honorables F. A. Monroe, N. H. Rightor, Geo. H.

Theard, T. C. W. Ellis, and F. D. King, judges of our said court, this 13th day of April, in the year of our Lord one thousand eight hundred and ninety-three, and in the one hundred and seventeenth year of the Independence of the United States.

[SEAL.] (Signed) JAS. D. RANKIN, *D'y Clerk.*

Sheriff's Return on Writ of Injunction.

Received Thursday, Apr. 13, 1893. On the same day, month, and year I served a copy of the within writ of injunction on The City of New Orleans, defendant herein named, by leaving the same at the city hall, in the mayor's office, in the hands of Clarke Steen, his chief clerk, Mayor John Fitzpatrick being absent from his office at time of said service.

Returned same day.

Sheriff's fees, $2.00.

(Signed) JAMES GARVEY,
Deputy Sheriff.

(Endorsed:) Docket 5. No. 38752. Civil district court for the parish of Orleans. Philip Werlein *versus* City of New Orleans. Merrick & Merrick, attorneys. Writ of injunction inside, to be served on the City of New Orleans through its proper officer. N. O. Filed April 14th, 1893. (Signed) Jas. D. Rankin, d'y cl'k.

Answer of the City of New Orleans.

Civil District Court for the Parish of Orleans.

PHILIP WERLEIN
vs.
CITY OF NEW ORLEANS. } No. 38752.

Now into court comes The City of New Orleans, made defendant herein, and for answer to plaintiff's petition denies all and singular the allegations thereof.

200 Further answering, defendant says that plaintiff is estopped from denying the legality and validity of the assessment and city taxes for which the said property is about to be sold for said taxes because of his having recognized the validity and legality of said assessment by paying the State taxes thereon.

Wherefore it prays that plaintiff's demand be rejected, with costs, and that the injunction herein issued be dissolved, with statutory damages, and for all and general relief.

(Signed) HORACE L. DUFOUR,
Assistant City Att'y.

(Endorsed:) No. 38752. Civil district court for the parish of Orleans. Philip Werlein *vs.* City of New Orleans. Answer. Filed May 1st, 1893. (Signed) Jas. D. Rankin, d'y cl'k. Horace L. Dufour, assistant city attorney.

201 *Certificate of the Clerk.*

UNITED STATES OF AMERICA,
State of Louisiana.

Supreme Court of the State of Louisiana.

I, Thomas McCabe Hyman, clerk of the supreme court of the State of Louisiana, do hereby certify that the foregoing 200 pages do contain a full, true, and complete copy of the transcript of the proceedings had in the civil district court for the parish of Orleans in a certain suit wherein The City of New Orleans was plaintiff and Philip Werlein was defendant, and also of all proceedings had in this supreme court on the appeal taken by said defendant, which appeal is now on the files thereof under the No. 12560.

Seal Supreme Court of the State of Louisiana.

In testimony whereof I have hereunto set my hand and affixed the seal of this honorable court, at the city of New Orleans, this seventh day of January, *anno Domini* one thousand eight hundred and ninety-nine, and in the one hundred and twenty-third year of the Independence of the United States of America.

T. McC. HYMAN, *Clerk.*

202 *Certificate of the Chief Justice.*

I, Francis Tillou Nicholls, chief justice of the supreme court of the State of Louisiana, do hereby certify that Thomas McCabe Hyman is clerk of the supreme court of the State of Louisiana, at New Orleans; that the signature of Thomas McCabe Hyman to the foregoing certificate is in the proper handwriting of him, the said clerk; that said certificate is in due form of law, and that full faith and credit are due to all of his official acts as such.

Seal Supreme Court of the State of Louisiana.

In testimony whereof I have hereunto set my hand and seal, at the city of New Orleans, this 7th day of January, *anno Domini* eighteen hundred and ninety-nine, and in the one hundred and twenty-third year of the Independence of the United States of America.

FRANCIS T. NICHOLLS,
Chief Justice.

203 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between

The City of New Orleans and Philip Werlein, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of the clause
204 of the Constitution, or of a treaty or statute of or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Philip Werlein, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within 30 days from the date hereof, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 12th day of December, in the year of our Lord one thousand eight hundred and ninety-eight.

{ Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La. }

E. R. HUNT,
Clerk of the Circuit Court of the United States for the Eastern District of Louisiana.

Allowed by—
——.

[Endorsed:] No. 12560. Supreme court of La. Philip Werlein, plaintiff in error, *versus* City of New Orleans. Writ of error. Filed Dec'r 12, 1898. T. McC. Hyman, clerk.

205 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to the City of New Orleans, through Walter C. Flower, mayor thereof, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State

of Louisiana, at New Orleans, wherein Philip Werlein is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said Philip Werlein, plaintiff in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Seal Supreme Court of the State of Louisiana.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 12th day of December, in the year of our Lord one thousand eight hundred and ninety-eight.

FRANCIS T. NICHOLLS,
Chief Justice of the Supreme Court of the State of Louisiana.

[Endorsed:] R. Serve- on City of New Orleans, through Walter C. Flower, mayor thereof. Supreme court of the State of Louisiana. No. 12560. Blanc. Philip Werlein, plaintiff in error, *vs.* City of New Orleans, defendant in error. Dec. 19, '98. Citation.

Sheriff's Return.

Received Saturday, Dec. 17, 1898, and on the 19th day of December, 1898, served a copy of the within citation on The City of New Orleans, defendant in error, by personal service on W. C. Flower, its mayor.

Returned same day.

J. ARTHUR BLANC,
D'y Sh'ff, Parish of Orleans.

James Arthur Blanc, deputy civil sheriff for the parish of Orleans, being sworn, deposeth and sayeth that he made a personal service of a copy of the within citation on Walter C. Flower, mayor of the city of New Orleans, on the date above mentioned *date.*

J. ARTHUR BLANC,
Deputy Civil Sheriff for the Parish of Orleans, Louisiana.

Sworn to and subscribed before me, at the city of New Orleans, on the 19th of December, 1898.

[Seal Supreme Court of the State of Louisiana.]

T. McC. HYMAN,
Clerk Supreme Court of Louisiana.

Filed Dec'r 19, 1898.

T. McC. HYMAN, *Clerk.*

Endorsed on cover: File No., 17,263. Louisiana supreme court. Term No., 678. Philip Werlein, plaintiff in error, *vs.* The City of New Orleans. Filed January 17, 1899.

SUPREME COURT OF THE UNITED STATES.

FOR THE OCTOBER TERM OF 1898.

No. 678.

PHILIP WERLEIN, PLAINTIFF IN ERROR,

versus

CITY OF NEW ORLEANS, DEFENDANT IN ERROR.

BRIEF OF PLAINTIFF IN ERROR ON MOTION TO DISMISS.

STATEMENT OF THE CASE.

John Klein having obtained a judgment in the *United States Circuit Court for the Eastern* District of Louisiana, in suit No. 7801 of the docket of that court, seized under a writ of *fieri facias* the property in question in this case.

The city of New Orleans, claiming the property seized, *enjoined the sale* of the property on various grounds in a suit *in the Circuit Court of the United States* in a cause entitled City of New Orleans vs. John Klein, No. 8461 of the docket of the Court.

The injunction suit was tried and the decision was adverse to the city of New Orleans and in favor of John Klein.

The property was then sold by the U. S. Marshal and has been held for nearly *twenty years by the plaintiff in*

error in this case by virtue of said judgment and marshal's sale.

About seventeen years after the title to the property has vested in the plaintiff in error, the city of New Orleans brought the present suit, alleging that the property was dedicated to public use and that the city of New Orleans was entitled to the use thereof, and entitled to the recovery of the property.

The defence made was that the plaintiff in error held title to the property under and by virtue of the Constitution and laws of the United States, and under and by virtue of the judgments of the Circuit Court of the United States.

The Supreme Court of Louisiana, directly in their opinion in this case, nullify and avoid the effect and force of the judgments of the United States Circuit Court, which are swept away as if entitled to no weight whatever.

The Federal question is raised whether force and effect shall be given in a State court to a final judgment and a title to a sale under a final judgment both of which were rendered under the Constitution and laws of the United States by a court of the United States.

The question is raised by exception and by our bill of exceptions in the lower court. It is also in our assignment of errors in the State Supreme Court.

The judgment of the State Supreme Court in this case shows that the federal question *has been urged and passed upon adversely*. City of New Orleans vs. Werlein, 50 An—.24 Southern Reporter, 232.

Argument.

To decide whether this cause contains a federal question your Honors would have to decide whether the judgment of the United States Circuit Court, the effect of which has been annulled by the State Supreme Court, was *res judicata* or not.

The cases quoted by the learned counsel for the city of New Orleans are not applicable.

This Court has repeatedly decided that where a right or immunity is set up under and by virtue of a judgment of a court of the United States and the decision of the State court is against such right or immunity a case is presented for removal and review by writ of error to the Supreme Court of the United States.

Mr. Justice Bradley says in *Dupasseur vs. Rochereau*, 21 Wal. 134:

"Where a State Court refuses to give effect to the "judgment of a Court of the United States rendered upon "the point in dispute, and with jurisdiction of the case "of the parties, a question is undoubtedly raised which, "under the act of 1867, may be brought to this Court for "revision.

"The case would be one in which a title or right is "claimed under an authority exercised under the United "States, and the decision is against the title or right set "up.

"It would thus be a case arising under the laws of the "United States establishing the Circuit Court and vesting "it with jurisdiction; and hence it would be within the "the judicial power of the United States as defined by the "Constitution; and it is clearly within the chart of appel-"late power given to this Court over cases arising in and "decided by the State courts" (21 Wal. 134).

The same question was decided by this Court in the case of the Crescent City Live Stock Co. vs. Butchers Union, 120 U. S. 146. In that case the Court, Mr. Justice Matthews speaking for the Court, says:

"It is argued by counsel for the defendant in error "that this does not embrace a Federal question; that the "effect to be given to a judgment or decree of the Circuit "Court of the United States, sitting in Louisiana by the "courts of that State, is to be determined by the law of

"Louisiana, or by some principle of general law as to "which the decision of the State court is final; and that "the ruling in question did not deprive the plaintiffs in "error of 'any privilege or immunity specially set up or "claimed under the Constitution or laws of the United "States.' But this is an error. The ques ion whether "a State court has given due effect to the judgment of a "court of the United States is a question arising under the "Constitution and laws of the United States, and comes "within the jurisdiction of the Federal courts by proper "process, although, as was said by this court in Dupasseur "vs. Rochereau, 21 Wall. 130, 135, 'No higher sanctity or "effect can be claimed for the judgment of the Circuit "Court of the United States rendered in such a case, un-"der such circumstances, than is due to the judgments of "the State courts in a like case and under simi-"lar circumstances.' Embry vs. Palmer, 107 "U. S. 3. It may be conceded, then, that the "judgment and decrees of the Circuit Court of the United "States, sitting in a particular State, in the courts of that "State, are to be accorded such effect, and such effect "only, as would be accorded in similar circumstances to "the judgments and decrees of a State tribunal of "equal authority. But it is within the jurisdiction of this "Court to determine, in this case, whether such due "effect has been given by the Supreme Court of Louisi-"ana to the decrees of the Circuit Court of the United "States here drawn in question."

This Court through Mr. Justice Shiras, in the case of Central National Bank vs. Stevens, 169 U. S. 460, announces the same opinion:

"Whether due effect has been given by a State Court "to a judgment or decree of a court of the United States "is a federal question within the jurisdiction of this Court "on a writ of error to the Supreme Court of theState."

Central National Bank vs. Stevens, 169 U. S. 460.

II.

Counsel for defendant in error next contends that "when the decision is made on settled pre-existing rules of general jurisprudence, the case can not be brought to this Court for review." But the general jurisprudence of this Court is very much against him. This is too clearly a federal question to admit of argument.

How are your Honors to decide, for instance whether the judgment is *res judicata* not only as to John Klein, but also as to his privy, Philip Werlein, the plaintiff in error, without passing upon the merits of the case?

Fleitas vs. Meraux, 47 An. (La.) 235.

How can you decide that the dismissal of the city's bill in chancery enjoining the sale of the property purchased by the plaintiff in error is a determination of the merits unless made "without prejudice," without passing upon the merits of the case?

Durant vs. Essex, 7 Wal. 107.

Case vs. Beauregard, 101 U. S. 555.

City Bank vs. Walden, 101 U. S. 688.

Fleitas vs. Meraux, 47 An. 241.

The single question for this court to decide in this case is, does the judgment of the United States Circuit Court and the marshal's sale vest the property in controversy in the plaintiff. The decision of the State court is against the plaintiff in error, holding the property under the authority of the judgment of a court of the United States.

Respectfully submitted,

EDWIN T. MERRICK,

Of Counsel.

No. 189.
Brf. of Merrick
189

Filed Feb. 23, 1900.

Supreme Court of the United States,

October Term, 1898.

No. 678.

PHILIP WERLEIN, PLAINTIFF IN ERROR

vs.

THE CITY OF NEW ORLEANS.

In Error to the Supreme Court of Louisiana.

BRIEF OF PLAINTIFF IN ERROR.

EDWIN T. MERRICK,
Of Counsel.

Palfrey-Dameron Co., L't'd, 304 Camp St.



Supreme Court of the United States,

October Term, 1898.

No. 678.

PHILIP WERLEIN, PLAINTIFF IN ERROR

vs.

THE CITY OF NEW ORLEANS.

In Error to the Supreme Court of Louisiana.

BRIEF OF PLAINTIFF IN ERROR.

STATEMENT.

I.

Andrew C. Lewis, by an adjudication at a marshal's sale, made on August 21st, 1878, in the suit of John Klein vs. City of New Orleans, No. 7,801 of the docket of the Circuit Court of the United States for the Eastern District of Louisiana, purchased the property in contest in this case, viz:

A certain portion of ground, together with the improvements thereon, situated in the first district of this city, in the square bounded by Poydras, Perdido, Carroll and Baronne Streets, and measuring 150 feet, 6 inches front on Baronne Street, 57 feet, 5 inches front on Perdido Street, 150 feet, 4⅜ inches on Carroll Street, and 57 feet, 5 inches

and 1 line on the line nearest Poydras Street; (p. 76) but subject to the usufruct existing in favor of the New Orleans & Carrollton Railroad Company. (p. 73.)

2. Lewis sold this property to Edward R. Hogan, November 29th, 1878. (p. 45.)

3. Hogan sold it on February 8th, 1879, to Bertrand Adoue. (p. 47.)

4. Bertrand Adoue sold it to P. and P. P. Werlein. (p. 48).

(*a*) On reference to this act (p. 48) the Court will see that other vendors join in the sale. In fact, Adoue purchased the property for Herman Zuberbier, Mrs. Baker and Mrs. Blaffer, Mrs. Vogel, Mrs. Adoue, Mrs. Touchemoulin and Jules E. Schneider.

The act states that at the time of the purchase, the *building* stood on said property known as the National Theatre and belonged to these people (p. 50) who held the land under a contract with the City of New Orleans (p. 43.)

(*b*) They also had purchased the usufruct of the New Orleans & Carrollton Railroad Co. (p. 40).

5. The heirs of P. P. Werlein transferred all their interest to Philip Werlein on August 7th, 1886. (p. 52).

6. Philip Werlin, whose name appears in this record as the plaintiff in error, died on November 6th, 1899, and his widow, Bettie P. Werlein, has been appointed testamentary executrix of his estate and has been made a party to this cause.

II.

The plaintiff in error, or rather, his representative, therefore stands in this Court as a subsequent purchaser of the real estate in contest, from Andrew C. Lewis, who purchased the property from the marshal's sale in suit No. 7,801, entitled John Klein vs. The City of New Orleans.

There is no question raised in this record at *the present time concerning the validity* of John Klein's judgment.

But when this property was seized by the marshal in the suit of Klein vs. New Orleans, the *City of New Orleans* on April 20th, 1878, *sued out an injunction against the sale* in a suit entitled City of New Orleans vs. John Klein, No. 8,461 of the docket of the Circuit Court of the United States for the Eastern District of Louisiana (pp. 55, 56 and 57.)

The city's grounds of complaint were:

That Klein had caused his judgment to be registered in the office of the administrator of public accounts according to the provisions of Act 5 of 1870, extra session, and that said act prohibited the issuance of a *fieri facias* upon a judgment so registered;

That Klein was no longer the owner of said judgment but had sold the same to the firm of Lessassier & Binder

And that the writ was for a larger sum than the balance due on said judgment.

This case was heard on the city's application for an injunction *pendente lite* and the restraining order and preliminary injunction issued April 25th, 1878.

Motion to dissolve the injunction was made and on June 19th, 1878, the cause was tried and submitted on the bill, answers and exhibits, and the following decree was rendered:

CITY OF NEW ORLEANS
vs.
JOHN KLIEN. } No. 8,461.

This cause came on to be heard at the present term.

On consideration thereof it is ordered, adjudged and decreed that the interlocutory injunction be dissolved, and injunction refused, and complainant's bill of complaint dismissed with costs.

June 19th, 1878.

(Signed) EDWARD C. BILLINGS, *Judge.*

The property in question was then advertised and sold by the marshal, as I have stated, under Klein's judgment

and bought in by Andrew C. Lewis, the *author* of plaintiff in error, as I have stated, on August 21st, 1878.

More than *sixteen and a half years after this* sale and *nearly seventeen years* after the adverse decision of the United States Circuit Court in the suit of the City of New Orleans vs. John Klein, No. 8,461, and after more than sixteen years of peaceful possession, and after receiving taxes thereon for this period, the City of New Orleans filed the present suit in the Civil District Court for the Parish of Orleans, claiming that the sale by the United States Marshal to Andrew C. Lewis was "absolutely null and void, and that no title or right whatever in or to said property passed by said sale to Andrew C. Lewis or to the defendant herein, who claims through mesne (*sic*) conveyances from Andrew C. Lewis," and alleging that the property was dedicated to public use and unsusceptible of alienation or of private ownership or of private possession, and that Werlein's possession was illegal and in bad faith.

The City of New Orleans claimed also in said petition that it was invested by the law with administration and possession of property for the public benefit. (pp. 1 and 2).

To this petition the plaintiff in error excepted that the judgment in the suit of Klein vs. The City of New Orleans No. 7,801 of the Circuit Court of the United States, and the judgment rendered in the injunction of the City of New Orleans vs. John Klein, No. 8,461 of the docket of the United States Circuit Court, constituted *res judicata* and that the sale thereunder was valid and binding on the city. (pp. 3 and 4).

And in case the exceptions and plea of *res judicata* should be overruled the plaintiff in error answered and pleaded estoppel on the part of the City by the suits pleaded as *res judicata*, and also in assessing the property to him and collecting taxes, etc. (For the answer of plaintiff in error, see pages 4, 5 and 6).

The exception and plea of *res judicata* was argued and submitted to the Court and was overruled. (P. 6).

The City of New Orleans, on June 27th, 1895, filed a supplemental and amended petition, in which it attempted to plead a judgment of the Supreme Court of the State as *res judicata* against Philip Werlein.

This amendment was met by an exception that it changed the issue—the original suit being an alleged dedication and not on a judgment.

This exception was sustained and the City's amended and supplemental petition was dismissed (p. 12) under the settled jurisprudence of Louisiana. 7 An. 334, Deniston vs. Payne.

The case was tried on the merits and from an adverse decision Philip Werlein appealed to the Supreme Court of Louisiana and the judgment of the court *a qua* sued out a writ of error to this Court.

The evidence shows that the property in question was always used by the City for private purposes and never as a public place or square for which purpose the City claimed it was dedicated.

A suit was brought in 1841 against the New Orleans & Carrollton railroad, to whom the property was leased, the judgment in which was attempted pleaded as *res judicata* by the City of New Orleans as already stated, and in the very judgment referred to the lease of the property to the railroad company was recognized.

It was afterwards leased to Magdalen Clausen in 1864, and in 1866 the railroad company sold its entire interest described as a right of occupany, to Christian Schneider and others, which sale was made subject to the Clausen lease.

The purchasers *built a theatre* on the property and in May, 1867, entered into a contract with the city, whereby the latter agreed to purchase the building at the expiration of the right of occupancy.

Errors Assigned.

The errors assigned are, I do not give them in the order in which they appear in the transcript (pp. 128 to 134), substantially as follows:

First.

That, as plaintiff in error constitutionally holds title to the property in controversy by virtue of a judgment, execution and marshal's sale in the suit of John Klein vs. New Orleans, No. 7,801 of the Circuit Court of the United States, and as the City of New Orleans had enjoined the sale of the proprty in the same Court in suit entitled City of New Orleans vs. John Klein, No. 8,461, and as said injunction suit was on final hearing decreed to be dismissed, and as said judgments have never been appealed from nor reversed nor annulled by any action brought to annul said judgments, that both and each of said judgments were entitled to the force and effect of *res judicata* under the constitution and laws of the United States, and that the lower State court erred against the constitution and laws of the United States in refusing to recognize the title of plaintiff in error to said property under said judgments.

Second.

That plaintiff in error and his authors legally hold said title to said property under the two judgments already mentioned of the Circuit Courts of the United States and marshal's deed aforesaid, which property never had been used for anything but private purposes; that the City of New Orleans left the plaintiff in error in undisturbed and recognized possession of said property, assessing the same in the name of plaintiff in error and his authors, and admitted in judicial proceedings the ownership of plaintiff in error, the Court erred in violation of the Constitution of the United States in not holding the City of New Orleans estopped by its said acts from contesting his title.

THIRD.

That the lower court erred in violation of the constitution and laws of the United States and against the authority of the Courts of the United States in rejecting, on the trial of the plea of *res judicata* and estoppel, the evidence of title of plaintiff in error consisting of the suits, and proceedings had in the United States Circuit Court, entitled John Klein vs. City of New Orleans, No. 7,801, and City of New Orleans vs. John Klein, No. 8,461, of the docket of said Court, and the marshal's deed, and the transfer through the various owners to the plaintiff in error.

FOURTH.

That the lower court erred in violation of the Constitution and laws of the United States in rejecting, on the trial of the plea of estoppel in this cause, the exemplifications of the suits of John Klein vs. City of New Orleans, and City of New Orleans vs. John Klein, Nos. 7,801 and 8461, respectively of the docket of the Circuit Court of the United States for the Fifth Court and Eastern District of Louisiana, and the different deeds from and including the deed of the United States Marshal, in suit No. 7801 of the docket of said Circuit Court, down to and inclusive of the evidences of title of plaintiff in error.

POINTS OF FACT OR LAW.

I.

The plaintiff in error holds the real estate in question by virtue of the two judgments referred to, viz:

The judgment of the United States Circuit Court for the Eastern District of Louisiana, in the cause entitled John Klein vs. the City of New Orleans, No. 7,801, and the judgment of the Circuit Court of the United States in the chancery suit entitled New Orleans against John Klein, in which a preliminary injunction was sued out by the City of New Orleans *to prevent the sale of this property*, was on final hearing dismissed.

These two judgments have never been appealed from, and no action of nullity has ever been brought to set them aside.

The effect of the dismissal of the city's injunction suit was to permit the sale of the property enjoined to proceed.

The United States Marshal acting under the authority of the federal tribunals, sold the property to the authors of the plaintiff in error and delivered them possession.

Sixteen years afterwards, the same plaintiff sues for possession of the property without paying any regard to the two judgments of the United States Circuit Court, and gets it if the judgments of the lower Court is to remain.

The city has not shown that any greater rights have accrued to it since its first suit. Nor has it shown that its circumstances have changed. If, as alleged in its second suit, it is suing as the administrator for the public benefit in 1895; there is not a syllable in the record to show that the city sued or had the right to sue in any other capacity in 1878!

In fact, the bill of complaint in the suit of the City of New Orleans vs. John Klein, No. 8,461 of the docket of the United States Circuit Court, does not allege whether the city sued as owner or as manager of the property for the public benefit, but is that a presumption that the city did not sue in the only capacity in which she had the right to sue in 1878?

II.

I cannot bring myself to the conclusion that the City of New Orleans can now entirely disregard the *fi fa* and sale thereunder of its property in Klein vs. New Orleans—or the legal effect of the dismissal of its bill to enjoin that sale.

There is no question that the decisions in the two cases referred to apply as *res judicata* and estoppel as well to the plaintiff in error, the executrix of Philip Werlein,

deceased, as to John Klein or A. C. Lewis, the original purchaser.

The final judgment of a court of competent jurisdiction is *res judicata* between the parties, their privies, assigns and *ayantes causes.*"

47 La. An. 232, Fleitas, Wife vs. Moraux.

3 La. An. 230, Delabigarre vs. Second Municipality.

8 La. An. 126, Johnson vs. Weld.

34 La. An. 814, Heroman vs. Louisiana Institute.

46 La. An. 1098, McNeely vs. Hyde.

43 La. An. 924, Broussard vs Broussard.

169 U. S. 248, Dull vs. Blackman.

167 U. S. 398, New Orleans vs. Citizens Bank.

III.

It will, I think, hardly be questioned that the decree rendered on the merits in the suit of the City of New Orleans vs. John Klein, in suit 8,461 dismissing the city's bill of complaint, was a *final* judgment.

This Court says in 101 U. S. 556, "we decided that the decree, absolute in its terms, dismissing the bill on the merits, was a final determination of the controversy, and constituted a bar to any further litigation of the same subject between the same parties."

101 U. S. 556, Durant vs. Essex.

In another case in the same volume, Mr. Justice Strong says, speaking of a similar decree:

"Thus it appears the bill exhibited all that was necessary to give to the Court, sitting as a Court of equity, complete jurisdiction over the subject of the controversy between the parties, and all the equities now asserted by the complainant in his present suit. It must, therefore, be held that the decree dismissing that bill determined the equities of the case. And this must be so, whether the reasons for the dismissal were sound or not. We regarded the case and treated it as requiring an adjudication upon the com-

plainant's equity to be paid out of the property in the hands of the railroad company. Nothing that can now be done in another suit can take away the legal effect of the decree. Even were we of opinion *that the case was erroneously decided*, it would still be *res judicata*, a bar to the complainants, a protection to the defendants. It would be idle, therefore, to reconsider the question whether the bank has a lien upon the property he seeks to charge, or whether there had been a trust in the bank's favor."

101 U. S. 692, Case vs. Beauregard.

"A decree dismissing a bill in an equity suit in the Circuit Court of the United States, which is absolute in its terms, unless made upon some ground which does not go to the merits, is a final determination of the controversy, and constitutes a bar to any further litigation of the same subject between the same parties."

7 Wal. 107, Durant vs. Essex Co.

"Dismissing a bill is a determination of the merits unless made "without prejudice."

Story's Equity Pleading.

47 A. 241, Fleitas, Wife, vs. Mereaux.

1 A. 46, City Bank of New Orleans vs. Walden.

IV.

It cannot be disputed that the sale being allowed to proceed and the city's injunction dismissed, the property was legally sold. Not only what was set up by the city to stop the sale, but every question that might have been set up was concluded by the decree.

"There are many general expressions in the books to the effect that the judgment of the court of competent jurisdiction is final and conclusive upon the parties, not only as to the matter actually determined, but as to every other matter which the parties might have litigated in the cause and might have had determined."

Black on Judgments, Sec. 731.

Interest reipublicae finis litium sit. After one determination of a suit on the merits, the controversy cannot be reopened to hear an additional reason which before existed and was within the knowledge of the party in support of the same cause of action.

As Mr. Justice Field says in Davis vs. Brown:

"So far as the demand involved in the action is concerned, the judgment has closed all controversy. Its validity is no longer open to contestation, whatever might have been said or proved at the trial for or against it.

"The judgment is not only conclusive as to what was actually determined respecting such *demand, but as to every matter which might have been brought forward and determined respecting it;* and this is all that the languge means which is quoted by counsel from opinions in adjudged cases in seeming consonance with his opinion."

94 U. S. 428, *Davis vs. Brown.*

Mr. Chief Justice Waite announces the same principle in the case of Stout vs. Lye, speaking of the effect of a judgment.

"That was a judgment on the merits of the identical matter now in question and it concluded the "parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to every other *additional matter which might have been offered for that purpose. Cromwell* vs. *County of Sac*, 94 U. S. 351, 352. It is true the mortgagor did not set up as a defense that the bank had no right to take up the mortgage, or that he was entitled to certain credits because of payments of usurious interest, but he was at liberty to do so. Not having done so he is concluded as to all such defences and so are his privies. 103 U. S. 71, *Stout vs. Lye.* (The italics are those of the writer, as are nearly all the italics in quotation in this brief).

A party cannot bring suit upon a certain state of facts and "after dismissal of his action bring another suit against the same party upon the *same state of facts upon a different theory*. The judgment in the first action is a complete estoppel in favor the successful party upon the same state of facts."

171 U. S. 209, Hubbell vs. United States.

The foregoing language was applied by Mr. Justice Brown to patent cases, but I can see no reason why it is not equally applicable to any other judgment.

The City of New Orleans can no more attempt to recover now on a different theory than any other litigant.

The object of the first suit was to stop the sale of certain property which the city claimed an interest in stopping.

The object of the second suit is to recover the sold property, and the city has now only the same right that she then had namely that of the proper person to look after the interests of the public.

The contest is about the identical lot of ground and the opinion of this Court in the case of the Last Chance Mining Company vs. Tyler Mining Company, 157 U. S. 683, quoted by Mr. Justice White, in New Orleans vs. Citizens' Bank, does not seem out of place here:

"The law in respect to estoppel by judgment is well settled and the only difficulty lies in the application of the law to the facts."

"The particular matter in controversy in the adverse suit was the *triangular piece of ground which is not the matter in dispute in this action.*"

"The judgment in that case is therefore not conclusive in this as to matters which might have been decided, but only to matters which were in fact decided. *Hopkins* vs. *Lee*, 6 Wheat. 109; *Smith* vs. *Kernochen*, 7 How. 198; *Pennington* vs. *Gibson*, 16 How. 65; *Stockton* vs. *Ford*, 18 How. 418; *Washington &c. Steam Packet Co.* vs. *Sickles*, 24 How.

333; *S. C.* 5 Wall. 580; *Lessee of Parish*, vs. *Ferris*, 2 Black 606; *Cromwell* vs. *County of Sack*, 94 U. S. 351; *Davis* vs. *Brown*, 94 U. S. 423; *Russell* vs. *Place*, 94 U. S. 606; *Campbell* vs. *Rankin*, 99 U. S. 261; *Lumber Co.* vs. *Buchtel*, 101 U. S. 638; *Stout* vs. *Lye*, 103 U. S. 66; *Nesbit* vs. *Riverside Independent District*, 144 U. S. 610; *Johnson Co.* vs. *Wharton*, 152 U. S. 252."

"And the law of Louisiana is exactly in accord with the rulings of this Court, for as said by the Supreme Court of Louisiana in *Heroman et al.* vs. *Louisiana Institute of Deaf and Dumb et al.*, 34 La. An. 805, 814:

"No principle of law is more inflexible than that which fixes the absolute conclusiveness of such a judgment upon the parties and their privies. Whether the reasons upon which it was based were sound or not and even if no reasons at all were given the judgment imports absolute verity, and the parties are forever estopped from disputing its correctness. Cooley on Const. Lim., p. 47 *et seq.* and the authorities there cited."

"Matters once determined in a court of competent jurisdiction may never again be called in question by parties or privies against objection, though the judgment may have been erroneous and liable to, and certain of, reversal in a higher court."

Bigelow Estoppel, 3rd. edition, outline, pp. lxi, 29, 57, 103.

"The estoppel extends to every material allegation or statement, which having been made on one side and denied on the other, was at issue in the cause, and was determined therein. *Aurora* vs. *West*, 7 Wall, 102; 4 N. Y. 113; 2 (La.) An. 462; 14 (La.) A. 576; 19 L. 318; 5 N. S. 664; 11 M. 607; 14 L. 233; 5 N. S. 170."

V.

From reading the foregoing authorities one would naturally believe, that in order to constitute *res judicata*, it

will suffice that the parties be the same and the object of the action the same.

The Civil Code of Louisiana, 2286, says:

"The authority of the thing adjudged takes place only with respect to what was the object of the judgment."

"The thing demanded must be the same; the demand must be founded on the same cause of action; the demand must be between the same parties and formed by them against each other in the same quality."

1. The object of the first suit of the City of New Orleans was to prevent the sale of the property in question under a judgment of the United States Circuit Court. In the second suit to recover the same property although sold.

2. The cause of action in both suits was the alleged right of the city to protect that property.

3. The demand in first suit was between the City of New Orleans and John Klein. The demand in second suit is between the City of New Orleans and Klein's privies.

The character of the action or the "demand" must always be determined by the prayer of the bill.

1 Rob. (La.) 110, Hood vs. Segrest.

"In order to determine the character of an action, resort must be had to the prayer in the petition for a judgment."

20 (La.) An. 170, Edwards vs. Buller.

Great stress has been laid by our adversaries upon that portion of Article 2286 which says the cause of action must be same.

Our adversaries say that in the first suit, the city sued as owner to prevent the sale, and in the second suit it claims as the proper person to control and administer the property.

We say that if the second position of the city is a correct one, that there is not one word in the bill for injunction in 1878 to show that the city was not then suing in the

same capacity. The city must have stood in judgment, then defending the only rights it had which are the same now as when the first suit was filed.

As to the expression "cause of action," we must not confuse it with the ground or means of action.

"Il ne faut pas confondre la cause de la demande avec les moyens de la prouver. Cette confusion serait un grand erreur. Que faut il donc entendre par la cause de la demande, *causa petendi.* Car le mot est un peu vague. Il importe beaucoup d'en déterminer le sens precis. C'est, dit Neratius, la *cause prochaine de l'action, causa proxima actionis* et non pas l'espèce ou le genre d'action, qu'un plaideur choisit pour demander en justice la chose qu'il reclame; car deux actions differentes peuvent avoir la même cause; la même cause peut produire plusieurs actions. Si *la chose demandée* EST LA MÊME, *la seconde action quoique differente de la première doit donc être repoussée par l'exception de la chose jugée.* 10 Toul. n. 161.

This authority is quoted favorably in 19 La. 326, Plique & Lebau vs. Perret *et al.*

Zachariae defines what is meant by the same cause of action even better than Toullier:

"Deux demandes doivent être considérée comme fondée sur la même cause, bien qu'à l'appui de la seconde ou presente un moyen nouveau, *pris d'une loi dont on avait negligê d'invoqner* les dispositions lors de la premiere, ou que l'on offre la preuve de faits qu'on n'avait pas d'abord articulés." 3 Zach. §769.

And in a note to the same action the learned author quotes:

"Il ne peut évidement être permis de recommencer un procès sur le simple pretexte de nouveaux moyens, soit de fait, soit de droit. Autrement les décisions judiciares n'aurait jamais qu'un caractère provisoire. Req. rej., 16 juillet, 1817, Sir., XVIII; Req. rej., 14 janvier, 1839, Sir.,

XXXIX, 1, 119. *Voy.* aussi Req. rej., 24 fevrier, 1835, Sir., XXXV, 1, 179."

We find this principle declared and applied by the Supreme Court of Louisiana in 40 La. An. 646. The Court said:

"It is too obvious to admit of serious discussion that this judgment absolutely and finally settled as between the Chaffes and Ludeling, the right of the former to require Ludeling to pay off their mortgage debt or to sell the land for the satisfaction thereof. Ludeling has had his day in Court on this issue and was bound to urge all his defenses, and his mouth is closed as to all matters antecedent to the judgment which he urged, or *might have urged* against its rendition.

"In his present petition for injunction, he sets up a multitude of matters, which were either pleaded, or *might have been pleaded* as grounds for denying or qualifying the above absolute judgment, as to all of which the Judge *a quo* suitained the plea of *res judicata;* and we consider his ruling to be clearly correct."

The Court of Appeals of New York said in the case of *Griffin vs. Long Island Railroad Co.*, 102 N. Y., 452.

"The rule is well settled that a former judgment of a Court of competent jurisdiction is final and conclusive between the parties, not only as to the matter actually determined, but as to every other matter which the parties might have litigated, and have decided as incident to or essentially connected with the subject matter of the litigation within the purview of the original action, either as a matter of claim or defense."

In 22 Wisconsin, 316, Danaher vs. Prentiss, the Court said:

"The rule to be derived from these cases is that the decision of a court of competent jurisdiction, being *res judicata*, is not only conclusive and binding on all other

courts of concurrent jurisdiction as to the subject matter thereby determined, but also as to every other matter which the parties might litigate in the case and which they *might* have decided."

In 45 Ind. 493, Bates vs. Spooner, the Court said:

"Whenever a matter is adjudicated and finally determined by a competent tribunal, it is considered as forever at rest."

"This is a principle upon which the repose of society materially depends, and it therefore prevails, with very few exceptions, throughout the civilized world."

"The principle not only embraces what was actually determined, but also extends to every other matter which the parties might have litigated on the case."

VI.

The object of the first suit of the City of New Orleans was to prevent the sale of the property. But the property was sold under the judgment of the courts of the United States.

Under the faith and credit of those judgments the plaintiff in error hold his title.

Are these judgments to be treated as absolute nullities and thus attack collaterally?

As our Court through the late Judge Miller recently said of the effect judgments of the U. S. Courts:

"Besides the jurisdiction to annul judgments conferred by the Code of Practice has no kind of application to the Federal Courts deriving their jurisdiction from the Constitution of the United States.

"*Dupuy vs. Bemiss*, 2 (La.) An. 509; *Stockton vs. Stanbrough*, 3 (La.) An. 390;" * * * , 47 (La.) An. 240; *Fleitas, Wife, vs. Mereaux.*

In the instant case, the sale had been made.

This property had been sold and transferred according to the judgments of the Circuit Court and whatever advant-

age though imprescriptibility might have been then urged to prevent the sale of property dedicated to public use, I submit it is now useless, to invoke to annul judgment regular upon its face in every respect and a valid sale thereunder.

In the Fleitas case 47 (La.) An. 240), is also the following significant language:

"There was also the writ of seizure and sale obtained by Richardson from the United States Court. Thus, the Court was clothed by the removed suit and the seizure and sale it decreed with jurisdiction of the controversy with respect to Mrs. Fleitas' rights under her mortgage judgment and title, and as to Richardson's rights under his mortgage. The jurisdiction was complete as to subject matter and as to the parties.

It is supposed the federal Courts could not pass on any right of Mrs. Fleitas against her husband and his property for restitution of her funds conferred by the laws of Louisiana.

"The answer is, the federal Courts are authorized to determine questions of that nature; that is, to determine the question as to any right claimed under the laws of the United States, even where that right is supposed to conflict with State legislation."

VII.

The idea that the two judgments of the Circuit Courts could be thus ignored, is utterly repugnant to the jurisprudence of Louisiana.

This is shown by analogous cases. For instance it is a well settled principle of our law *that no man will be permitted to injoin a judgment for a ground which he might have urged as a defence to the suit.*

The reason of this principle is that the judgment is *res judicata* for every thing which might have been urged in the case.

"A judgment debtor against whom a final judgment has been rendered cannot enjoin the execution of the judgment on the ground that the mortgage on which the judgment was based had perempted before the judgment was rendered. As to him the judgment is *res judicata.*" 30 (La.) An. 1238, Haynes vs. O'Neil.

"Matters that could have been urged by way of defense, on the original trial of a case, and on appeal from the judgment in the case, afford no grounds for injoining the execution of that judgment."

30 (La.) An. 441, O'Connor et al. vs. Sheriff.

See also 13 (La.) An. 111, Sartorius vs. Dawson.

25 (La.) An. 538, Naughton vs. Drinkgrave et al.

In 26 (La.) An. 34, the Court says:

"There is no principle better settled than that a party is not allowed to arrest an execution on grounds that he might have set up in his original suit."

"Here the party taking the injunction, not only might have set up in the original suit that the Accommodation Bank was not legally incorporated, but did do it. Hence, it is *res judicata.*" 26 (La.) An. 34, Mahan vs. Accommodation Bank.

Again:

"An injunction will not lie, to stay the execution of a of a judgment for the amount of a note given for the price of a tract of land, on the allegation that, since the rendering of the judgment, plaintiff has discovered that the defendant, his vendor, had no title to the land."

"The execution can only be restricted by appeal, or action of nullity or on an allegation of extinguishment by payment, release, confusion, novation or other legal mode."

3 R. 273, Morrison vs. Crooks.

VIII.

There is another rule of Louisiana practice which forbids a party *bringing a second injunction on any ground whatever after the first injunction has been dissolved.*

This is because the dismissal of the first injunction was *res judicata.*

If the City could not have brought a second injunction suit against Klein, how is it she can now bring a suit and take back the property without even annulling the judgments under which its title is sheltered.

The rule that second injunction will not issue after the dismissal of a previous injunction is well settled by Judge Illsley in the case of State vs. Judge of Second Judicial District Court, where many different *causes of action* were set up to use my adversaries mode of expressions, where he says:

"All those objections, if available, *were pleadable in the first injunction suit*, and being, *in the contemplation of law disposed of in the first injunction* cannot be set up as grounds in a second injunction, whereby injunction for those alleged causes was unprovidently and illegally granted by the Judge of the lower court."

20 (La.) An. 522.

And the Court says further: 20 (La.) An. 523).

"All impediments existing when the first injunction was granted were removed by the dissolution of that injunction and the order and writ of seizure and sale were thereby restored to their pristine efficiency, as a necessary logical consequence of the dissolution."

"The decree of this Court which affirmed the judgment dissolving the injunction, cannot be arrested for any of the grounds existing and pleadable when it was granted."

20 La. An. 523, State vs. Judge Second Judicial District Court.

If the City of New Orleans who injoined in 1878 under the only title it then possessed or ever possessed, and if it was judicially estopped by the judgment dismissing its injunction, it could not procure another injunction.

How then can it actually recover property of which it has been judicially divested.

How can the City disregard the force and effect of a decree of court and a judgment and sale thereunder? The City of New Orleans whose rights were the same in 1878 as it now claims they are now absolutely disregard the judgments of the Court and the judicial sale of the property, and as is attempting to take away from the legal owner as if he were a mere trespasser.

Our adversaries appear to think that a judgment contrary to a rule of public order is not *res judicata*, and that therefore a dedication to public use cannot be divested.

This point is disposed of by the decision of Mr. Justice White, then a Judge of the Supreme Court of Louisiana, in 31 (La.) An. 212, Succession of Lebrew. The syllabus reads:

"The binding effect of *res adjudicata* cannot be impaired by the fact that the thing established by it involves a question of public order, and is afterwards found to be wholly untrue."

"The presumption that the thing adjudged is true, is so conclusive, no subsequent discovery can disturb it."

And in the body of the decision, 31 (La.) An. 214, Mr. Justice White, speaking of the contention that there can be no *res judicata* against a rule of public order, quotes the following passage from Demolombe:

"But it may be contended in case of a nullity founded on public order, which a defendant could not renounce, he can consequently urge it in a second suit, although not presented in the first. We reply that the distinction is inadmissible." * * * "Because it is contrary to every principle. What! When a pleader has defended himself by

every means, or even when he has been condemned by default will it be said that the law will presume that he has failed to present his defenses? Certainly not. That which it presumes is that these defenses do not exist."

31 (La.) An. 214, Succession of Lebrew.

Respectfully submitted,

By EDWIN T. MERRICK,

Of Counsel.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1899.

No. 189.

PHILIP WERLEIN, PLAINTIFF IN ERROR,

vs.

CITY OF NEW ORLEANS, DEFENDANT IN ERROR.

Brief for Plaintiff in Error in Reply.

I.

My adversary, in his zeal for the interest of New Orleans, overlooks or misunderstands the position of the plaintiff in error entirely.

I do not admit that the question of dedication to public use was not raised in the injunction suit brought by the city in the circuit court of the United States to prevent the sale and actual transfer of title to the property in question in this case.

On the contrary, the title to the property—the ownership of the property—being in question in that case, the question

of dedication to public use was necessarily decided when the injunction was dismissed without reservation.

In other words, the City of New Orleans has not shown and cannot show that the rights which it claims to possess are any different from those it possessed twenty-two years ago, when it attempted to prevent the transfer of ownership of this property by the marshal's sale.

The statement of my adversary, "It is admitted by counsel for plaintiff in error that the question of dedication to public use," is not correct. That question certainly was incidental to ownership of the property, and I will show the court that under the law of Louisiana something more was in contest than the mere prevention of the marshal from selling the *city's individual interest*, as my adversary would express it.

II.

But we do not admit that *as a fact the property was dedicated to public use.* We only say that if it was dedicated to public use the ownership vested in the plaintiff in error just the same.

Stress is laid on the fact that the writ of *fi. fa.* seizes "all the right, title, and interest of the City of New Orleans," and that the writ does not seize the improvements and property itself.

My adversary neglects to inform this court that this is a proper form of making a seizure in Louisiana:

"The seizure of *all the right, title, and interest* of the debtor in and to the thing seized is a sufficient seizure of the thing itself."

11 A., 705, *Davis vs. Carroll.*

"Where a sheriff seizes, advertises for sale, and sells" all the right, title, and interest of the debtor in a lot of ground owned by him, but which was encumbered with mort-

gages, it must be considered as a seizure and sale of the property itself and not of the contingent rights of the debtor to so much of the property as may remain after the mortgages are satisfied.

1 A. (La.), 426, *Trudeau et al. vs. McVicar.*

III.

As a matter of fact, there is no good and sufficient proof in this record that the property in question was dedicated to public use.

The testimony shows that sixty-six years ago the boys used to shoot snipe on the so-called public square; that it was a goose pond (R., 12 and 13); that it was used also, in 1837, by a railroad company (R., 13); that afterwards it was used for a German theater (R., 15).

That at one period, shortly after 1835, a drug store was there (R., 17); at another time, a church (R., 19, and map, R., 81).

Even had some sort of dedication to public use actually been carried out, which is denied, our law is not so rigorous as our adversary contends.

Our supreme court has held that the abandonment of a public road for more than thirty years, during which time the possession of individuals has been undisturbed, prevents further subjection to public use.

3 A., 482, —— —— *et al. vs. Arnault et al.*

In this case, as stated in my original brief, the city has collected thousands of dollars for taxes (R., 91) from plaintiff in error and his authors, and so has the State (R., 90), and the city, when it served its convenience to do so, has pleaded estoppel against the plaintiff in error when he disputed the amount of an assessment (R., 32).

There is no justice nor honor in the position now assumed by the city, and the question now submitted to this court is whether it will give force and effect to the judgments of its subordinate courts which stand today unappealed from, not annulled by any direct action.

Respectfully submitted.

EDWIN T. MERRICK,
Of Counsel.

THE

SUPREME COURT OF THE UNITED STATES.

No. 678.

FOR THE OCTOBER TERM, 1893.

PHILLIP WERLEIN, PLAINTIFF IN ERROR,

versus

CITY OF NEW ORLEANS, DEFENDANT IN ERROR.

Comes now the appellee, by its counsel appearing in that behalf, and moves the Court to dismiss the appeal in the above entitled cause for want of jurisdiction, because the judgment or decree from which the said appeal purports to have been taken is the judgment or decree of the Supreme Court of one of the United States, to-wit, the Supreme Court of the State of Louisiana, and that there is no Federal question involved.

And the said appellee, by counsel as aforesaid, also moves the Court to affirm the said judgment or decree from which the said appeal purports to have been taken, because, although the record in the said cause may show that this Court has jurisdiction in the premises, yet it is manifest that said appeal was taken for delay only.

Sam'l L. Gilm

Counsel for Appellee.

SUPREME COURT OF THE UNITED STATES.

FOR THE OCTOBER TERM OF 1898

No. 678.

PHILIP WERLEIN, PLAINTIFF IN ERROR,

versus

CITY OF NEW ORLEANS, DEFENDANT IN ERROR.

STATEMENT OF THE CASE.

The city of New Orleans in its capacity of administrator of all property within its limits, dedicated to public use, instituted this suit in the Civil District Court in the parish of Orleans and State of Louisiana for the possession of a certain portion of ground situated in the city of New Orleans—alleging that said property had been dedicated to public use as a public park, or place, and was formerly known as "Place Gravier," and that defendant was in the unlawful possession thereof.

Defendant answered and avers that he held title to said property by mesne conveyances from one Andrew C. Lewis, who acquired same at marshal's sale, made under a writ of *fieri facias*, issued in the suit of John Klein vs. The City of New Orleans, No. 7801, of the docket of the

United States Circuit Court for the Eastern District of Louisiana.

Defendant further averred that under a judgment rendered in suit of Klein vs. City a writ of *fieri facias* issued and the property in controversy was seized thereunder and advertised for sale; that the city of New Orleans enjoined the sale thereof in cause entitled "City of New Orleans vs. John Klein," No. 8461 of the docket of the United States Circuit Court, alleging that Klein had no right to issue the writ of *fieri facias* above referred to, for the reasons that he had caused his judgment to be registered in the office of the Administrator of Public Accounts under the provisions of Act No. 5 of the Extra Session of the Legislature of 1870 and was without other remedy, and had transferred all his title and interest in and to the judgment to Messrs. Lesassier and Binder; that on the 19th day of June, 1878, a final decree and judgment was rendered by said Court against the city of New Orleans and in favor of John Klein, in said suit No. 8461, whereby said injunction was dissolved, and the property was then sold as above stated. Defendant plead said judgment as *res adjudicata*. Defendant also plead prescription and estoppel by conduct.

The plea of *res adjudicata* was tried in the court of the first instance by way of exception, and was overruled. The case came on for trial on its merits, and judgment was rendered for plaintiff as prayed for. Defendant appealed to the State Supreme Court, and the judgment of the lower court was affirmed, and defendant is now here as plaintiff in error to this Court.

Argument.

The motion to dismiss herein is made upon the following grounds:

I.

The Court has no jurisdiction to review a judgment of the highest Court of a State unless a federal question has

been either in expressed terms or by necessary effect decided by the Court against the plaintiff in error.

San Francisco, City and County, vs. Itsell, 133 U. S. 65; Revised Statutes, Sec. 709; New Orleans Waterworks vs. Louisiana Sugar Refining Company, 125 U. S. 18; DeSaussure vs. Gaillard, 127 U. S. 216; Hale vs. Akers, 132 U. S. 554.

In San Francisco vs. Itsell, 133 U. S. 65, the Court said:

"This Court has no jurisdiction to review a judgment "of the highest Court of a State, unless a federal ques- "tion had been either in expressed terms or by necessary "effect decided by that Court against the plaintiff in "error (Authorities).

"In the present case, the record of the pleadings, "findings of facts and judgment shows that it was un- "necesssary for that Court to decide, and its opinion filed "in the case and copied in the record shows that it did not "decide, any question against the plaintiff in error except "the issue whether the former judgment rendered against "it and in favor of the grantor of the defendants in error "was a bar to this action. That was a question of general "law only, in no wise depending upon the Constitution, "treaties or statutes of the United States (*Chouteau vs. "Gibson, 111 U. S. 200*). *Writ of error dismissed for "want of jurisdiction.*"

II.

Where the decision is made on settled pre-existing rules of general jurisprudence, the case can not be brought to this Court for review.

Bank of Tennessee vs. Citizens Bank, 14 Wall. 9; Palmer vs. Morston, 14 Wall. 10; Sevier vs. Haskell, 14 Wall. 12; Dealmas vs. Insurance Co., 14 Wall. 661.

III.

Nor if decided exclusively upon the principles of jurisprudence of the State.

Marqueze vs. Bloom, 16 Wall. 351.

Respectfully submitted,

S. L. GILMORE,
City Attorney.

SUPREME COURT OF THE UNITED STATES.

FOR THE OCTOBER TERM OF 1898.

No. 678.

PHILIP WERLEIN, PLAINTIFF IN ERROR,

versus

CITY OF NEW ORLEANS, DEFENDANT IN ERROR.

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Defendant answered and averred that he held title to said property by mesne conveyances, from one Andrew C. Lewis, who acquired same at a marshal's sale, made under a writ of *fieri facias*, issued in the suit of John Klein vs. The City of New Orleans, No. 7801, of the docket of the

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Defendant further averred that under a judgment rendered in the suit of Klein vs. City a writ of *fieri facias* issued and the property in controversy was seized thereunder and advertised for sale; that the city of New Orleans enjoined the sale thereof in a cause entitled "City of New Orleans vs. John Klein," No. 8461 of the docket of the United States Circuit Court, alleging that Klein had no right to the writ of *fieri facias* above referred to, for the reasons that he had caused his judgment to be registered in the office of the Administrator of Public Accounts under the provisions of Act No. 5 of the Extra Session of the Legislature of Louisiana of 1870 and was without other remedy, and had transferred all his title and interest in and to the judgment to Messrs. Lesassier and Binder; that on the 19th day of June, 1878, a final decree was rendered by said Court against the city of New Orleans and in favor of John Klein, in said suit No. 8461, whereby said injunction was dissolved, and the property was then sold as above stated. Defendant pleaded said judgment as *res adjudicata*. Defendant also plead prescription and estoppel by conduct.

The plea of *res adjudicata* was tried in the court of the first instance by way of exception, and was overruled. The case came on for trial on its merits, and judgment was rendered for plaintiff as prayed for. Defendant appealed to the Supreme Court of Louisiana, the judgment of the lower court was affirmed, and defendant is now here as plaintiff in error to this Court.

A motion to dismiss hereinbefore made in this Court, has been referred to the merits.

Argument on Question of Jurisdiction.

It is claimed that a Federal question has been raised in this case by the failure of the Supreme Court of Louis-

ana to give due force and effect to a judgment of the United States Circuit Court, which was pleaded by defendant, now plaintiff in error, as *res judicata* and estoppel.

An examination of the record will disclose the fact that the question as to whether the property in controversy was dedicated to public use or not, was not put at issue in the injunction suit of the City of New Orleans vs. John Klein, the judgment in which is here pleaded as *res judicata*, and estoppel, and that the question of the dedication of the property to public use *vel non*, is the only one involved in the case at bar. If this statement be true, how is it possible that the Supreme Court of Louisiana has failed to give due effect to the Klein judgment?

It is admitted by counsel for plaintiff in error that the question of dedication to public use was not raised in the Klein case; but he argues that the city of New Orleans having enjoined the sale of the property in its case against Klein, the judgment dismissing the city's bill of complaint, that case is conclusive not only of all matters actually determined, but of every other matter which the parties might have litigated and which might have been determined in the injunction case, and that the issue involved in this suit might have been litigated and determined in the Klein injunction suit. The sole contention of plaintiff in error is that the city of New Orleans is estopped from bringing this action, not because the issue herein was determined in the Klein injunction case, but because the issue was not presented in that case.

The Supreme Court of Louisiana as well as the Civil District Court of Louisiana differed from plaintiff in error and he now asks this Court to pass upon the question, which is in no sense a Federal question.

If the United States Circuit Court, in the Klein injunc- case, had decided the issue raised in the case at bar, and

if the State court had rendered a decision contrary to and in conflict with the decision of the Circuit Court, this Court might have jurisdiction, but such is not the fact.

As stated, the sole question involved in the case at bar is whether under the law of Louisiana, the city of New Orleans having made no appearance in the Klein case, as the administrator of public property, to assert the public's title to the property, can now be heard to set up the public's title; *i. e.*, as to whether the property is a *locus publicus* or not, and as such insusceptible of private ownership.

The solution of this question depends upon the application of the laws of the State of Louisiana.

The effect of the judgment dismissing the city's injunction suit against Klein is correctly stated by our opponent in his brief, on folio 8, as follows:

"The effect of the dismissal of the city's injunction suit was to permit the sale of the property enjoined to proceed."

From this it will be seen that our opponent does not claim that there was any judgment in the United States Circuit Court, which had determined his right to seize and sell this particular property, as property of which the city was owner. The sole issue involved in the Klein case was John Klein's right to execute his judgment, not as against this or any other particular property, but his right to execute it *at all* as against *any* property belonging to the city of New Orleans (pp. 55, 56 and 57). The judgment of the Supreme Court of Louisiana in this case does not decide that John Klein had no right to execute his judgment and to seize and sell under his *fi. fa.* any property belonging to the city of New Orleans.

The Supreme Court of Louisiana has merely decided that the property seized and sold did not belong to the city but to the public and was not subject to seizure, a

matter which the United States Circuit Court never passed upon. We fail to see that there has been any decree of the United States Courts disregarded by the State Court, or any right of the plaintiff in error under such a decree ignored, as alleged.

It is clear that the purchaser of this property at marshal's sale acquired no better title than the city of New Orleans had, regardless of the number of decrees which may have been rendered by the Circuit Court as between the city of New Orleans and John Klein. We have seen that the city of New Orleans had no title to the property, and it follows, therefore, that the purchaser at marshal's sale acquired none.

The case of San Francisco vs. Itsell, 133 U. S. 65, involved an issue similar to that presented here, and we quote the following:

"In the present case the record of the pleading, find-
" ings of facts and judgment shows that it was unneces-
" sary for that Court to decide, and its opinion filed in
" the case and copies in the record show that it did not
" decide any question against the plaintiff in error except
" the issue whether the former judgment rendered against
" it and in favor of the grant of the defendants in error
" was a bar to this action. That was a question of gen-
" eral law only, in no wise depending upon the Constitu-
" tion, treaties or statutes of the United States (Chouteau
" vs. Gibson, 111 U. S. 200). Writ of error dismissed
" for want of jurisdiction."

We take it to be well settled that where a decision is made on a pre-existing rule of general jurisprudence the case can not be brought to this court for review.

Bank of Tennessee vs. Citizens' Bank, 14 Wall, 9; Parmer vs. Morston, 14th Wall. 10; Sevier vs. Haskell, 14th Wall. 12; Dealmas vs. Insurance Company, 14th Wall. 661.

Nor if decided exclusively upon the principles of jurisprudence of the State.

Marqueze vs. Bloom, 16th Wall. 351.

Argument on Merits.

The defendant's plea of *res adjudicata* was properly over ruled by the Court below.

Article 2286 of the Civil Code of Louisiana says:

"The authority of the thing adjudged takes place only "with respect to what was the object of the judgment. "The thing demanded must be the same; the demand "must be found on the same cause of action; the demand "must be between the same parties, and formed by them "against each other in the same quality."

There are three of the elements of *res adjudicata* lacking in this case.

I.

The thing demanded in the suit of the City of New Orleans vs. John Klein, No. 8461 of the United States Circuit Court, and the thing demanded at the suit in bar are not the same.

The learned counsel for defendant is correct in his position that it is by the prayer of the petition or bill that the character of an action and the nature of the thing demanded must be determined.

The error the learned counsel falls into is that, in his argument, he confounds the thing demanded with the *cause of action* upon which the demand is based.

The prayer of the city in its bill of complaint in the suit No. 8461 of the United States Circuit Court is as follows:

"Your orator prays that the said John Klein, his attor- "neys or agents, may be restrained by an injunction issu- "ing out of this Court from proceeding further in the "advertisement and sale of the said property under the "said writ. May it please your Honors to grant unto "your orator the writ of injunction, issuing out of and "under the seal of this Court, directed to the said John "Klein, his agents or attorneys, commanding them and "each of them from proceeding further in the advertise-

" ment or sale of the said property under the said writ, " or by virtue of the said judgment.

"Your orator further prays that on a further hearing of " this case it may be decreed that the said writ of *pluries* " *fieri facias* and the seizure made thereunder are illegal, " null and void, and that the injunction herein issued may " be perpetuated, and that your orator may have gener- " ally such other and further relief as the nature of the " case may require.

"Therefore, will your Honors grant unto your orator " the writ of subpœna issuing out of and under the seal " of this Honorable Court, to be directed to said defend- " ant, John Klein, commanding him by a certain day and " under a certain penalty to appear before your Honors " in this Court, and then and there answer the premises " and abide the order and decree of the Court."

It will be noticed at once that the thing demanded in the city's suit in the United States Court was the denial of any execution on Klein's judgment, not the denial of the sale of *any particular* piece of property seized. Klein's right to the judgment and his right to the writ issued thereunder were involved, but not the title of the city to the property under seizure.

The city's injunction suit could have as well been brought after the issuance of the writ of *fieri facias*, but *before* the marshal had made a levy upon any property, and the judgment would have fully covered the subject matter of the litigation.

The subject matter of the injunction suit was not the city's title property seized, but Klein's right to seize any property.

Conceding, however, that the thing demanded in the injunction suit was something more than a denial to Klein of *any* execution on his judgment, and that it included also a denial to Klein of the sale of the particular property under seizure, the judgment dismissing the city's bill

of complaint can not constitute *res adjudicata* in this case for the simple reason that the property involved herein was not seized or sold in the case of Klein vs. the City.

All, as far as this case is concerned, that was seized in the Klein case, was:

"All the right, title and interest of the city of New " Orleans in and to the portion of ground described as " follows, together with all the right, title and interest of " said city, in and to the buildings and improvements on " said portion of ground known as the National Theatre:

"The lot of ground bounded by Baronne, Perdido, " Carroll and Poydras, measuring one hundred and " fifty feet and six inches on Baronne street, fifty-seven " feet and five inches on Perdido street, one hundred and " fifty feet and four and three-eighths inches on Carroll " street, and fifty-seven feet and five inches on the line " nearest Poydras street, which foregoing lot of ground " is subject to the usufruct of the New Orleans and Car- " rollton Railroad Company until the 9th day of Febru- " ary, 1883.

" Reference is made for more particulars to Resolution " No. 90, New Series, passed by the Common Council " and approved June 7, 1866, and to an act of agreement " passed before William J. Castell, notary public, on the " 8th day of May, 1867, by the Mayor of New Orleans, " of the first part, and by Christian Schneider and others " of the second part."

Writ of *fieri facias*, Record marked K.

The property involved in this case is not, however, the right, title and interest of the city in and to the real estate in controversy or to the improvements which stood upon the ground at the date of the marshal's sale, *it is the right, title and interest of the public in and to the real estate*, the public always having had complete right, title and interest to the ground subject to the usufruct spoken of above, and never having had any right, title and inter-

est in or to the improvements which plaintiff in error duly received and profited by.

The judgment in City vs. Klein may be *res adjudicata* as to the property seized in Klein vs. City, and may be pleaded as a bar if the city should ever set up private title in herself to the property, but it certainly is not *res adjudicata* when the public sets up its right, title and interest as it does here.

The judgment in City vs. Klein no more included the public's right to the property now in controversy, or concluded the question of the existence of the public's right, than would the seizure in that suit have included a private individual's right to his property, if such property had been erroneously seized as city property, or have prevented such individual from subsequently asserting his title. It is true that in the assertion of their public rights the city represents its citizens, but it is also true that in the case of City vs. Klein no public right was asserted and no public interest in any property involved, only the city's private interest, as distinguished from the public's, being there under seizure. Moreover, the title to property dedicated to public use does not stand in the city's name. Indeed, there is often no written title to such property.

The city owns and can own property which is alienable, and to such property she has, what we may style, private title. If under a money judgment against the city property dedicated to public use is erroneously seized as alienable property, to which the city has private title, the seizure in no way affects the public's interest in the property. Louisiana Construction Co. vs. City of New Orleans, 124 U. S.

Giving the judgment in the case of City vs. Klein its fullest effect as *res adjudicata*, all it settles is the question of the city's private right, title and interest in the real estate and improvements thereon; giving to the marshal's sale to Lewis its fullest effect, all that Lewis acquired was

the city's interest in the improvements, the city being without title to the real estate.

In this connection it is well to add that Lewis got full consideration for the small price he paid. The theatre which stood upon the ground became his, for as far as this record discloses, his possession was not interfered with by Christian Schneider and his associates, and if it had been he and transferees would have undoubtedly become absolute owners on 9th February, 1883, when the city had to pay the appraised value. The obligation of the city to pay to Schneider and his associates the appraised value of the improvements was a personal one on the part of the city, the performance of which could have been compelled by Schneider and his associates any time within ten years from 9th February, 1883, but it in no way operated as a lien upon the improvements in favor of Schneider and his associates.

The improvements, bought by Lewis, as the record will show, were transferred and retransferred until they came into the possession of the present defendant. His possession of them, or his right to any insurance paid him when they were destroyed by fire, were never questioned by the city, nor as far as we know, by Schneider and his associates.

The language of the writ of *fieri facias* suggests at once that it was the city's interest in the *improvements* and not any interest in the real estate which the city was supposed to have which Klein intended to reach by the seizure and sale.

II.

The cause of action in the suit of City vs. Klein was not the same as the cause of action in the present suit.

"What is the cause of action? It is the *immediate found-*
"*ation* of the right which one claims to exercise. It is the
"*immediate basis* of the demand, and hence we must guard

"against confounding the *cause* of action, either with the "various bases or simple means which produce this last "cause or with the *right itself* which is the object of the "demand."

Slocomb vs. De Lizardi, 21 An. 356.

The causes of action in the suit of City vs. Klein were Klein's alleged registry of his judgment under the act of 1870, and his alleged transfer to LeSassier & Binder.

The cause of action in this suit is the dedication of the property in controversy to public use.

The learned counsel for defendant, at page 5 in his brief, lays down, as a fixed and plain principle of law, the proposition that a "judgment of a court of competent ju- "risdiction is final and conclusive upon the parties, not "only as to the matter actually determined, but as to "every other matter which the parties might have litiga- "ted in the cause and might have had determined."

Mr. Freeman, however, in his work on Judgments, pages 441 and 442, Sec. 249, says:

"The general expression, often found in the reports, that a judgment is conclusive of every matter which the parties might have litigated in the action is misleading. What is really meant by this expression is that a judgment is conclusive upon the issues tendered by the plaintiff's complaint. It may be that the plaintiff might have united other causes of action with that set out in his complaint, or that the defendant might have interposed counter claims, cross bills and equitable defences, or either of the parties may have acquired new rights pending the litigation, which might, by permission of the Court, have been pleaded by supplemental complaint or answer, and, therefore, might have been litigated in the action. But as long as these several matters are not tendered as issues in the action, they are not affected by it. Whatever material allegations the plaintiff makes in his pleadings he must maintain, if they are controverted, and failing to do so, a

judgment against him is conclusive of their falsity. The defendant, on his part, must controvert all these allegations which he wishes to gainsay, and failing to do so, their truth is incontestably established as against him. He can not by failing to deny any of them, or if he denies them, by failing to offer evidence to controvert that offered by plaintiff in support of any of them, successfully claim that it has not been litigated and determiued against him. In other words, neither party can decline to meet an issue tendered by the other, and then maintain that it has not become *res adjudicata*. The plaintiff must support all the issues necessary to maintain his cause of action. The defendant must bring forward all the defences which he has to the cause of action asserted in the plaintiff's pleadings at the time they were filed. In this sense it is true that a judgment is conclusiye of every matter which might have been litigated and decided in the action. But the plaintiff is under no obligation to tender issues not necessary to support his cause of action, nor is the defendant required to meet issues not tendered by plaintiff; and if, after the defendant has fully met all the issues tendered by plaintiff, there is any matter not admissible in evidence under the pleadings it is generally not concluded by the judgment, though the parties might by different pleadings have made it an issue in the action and had it determined."

Freeman on Judgments, Vol. 1, 4th Ed., Sec. 249.

It must be also remembered that the identities required to make a matter *res adjudicata* are not the same under every system of jurisprudence, and are not everywhere fixed and defined, as in Louisiana they are by the provisions of the Code.

III.

The city, in the case of City vs. Klein, did not appear in the same quality as in the present suit.

In the injunction suit in the United States Court the city appeared in her own right, to prevent the sale of a supposed private interest in certain real estate and a real private interest in improvements on that real estate.

Here the city appears as an administrator or as a trustee for the *public*, asserting a *public* interest in certain real estate, the fact that the different interests of the city and the public happen to bear upon the same real estate being the only point of similarity between the two cases.

Nor does the alleged acquiescence by the city in the judgment in the injunction suit or in the sale of the property help defendant's position.

"Again, it is contended that the plea of *res judicata* must be held to be good, because the plaintiff acquiesced in the judgment by receiving a part of the fruits thereof. There is no doubt that acquiescence in a judgment, however manifested, constitutes what is decided by *that* judgment the thing adjudged—that is, it becomes thereby a final judgment, from which they can be no appeal." C. C., Art. 3522.

But that is all. If a judgment which has become final by the lapse of time could not be pleaded as a bar to another action on account of the want of one or more of the conditions, which we have seen are necessary to give it the authority of the thing adjudged, it could not be set up as such a bar if the judgment had become final by acquiescence." Slocomb vs. De Lizardi, 21 An., p. 357.

IV.

Defendant's plea of estoppel can not be maintained.

It is true that in the city's injunction suit in the United States Court, the City Attorney did not plead the dedication to public use of the property now in controversy, but in view of the fact already noticed, that only the city's private interest and not the public's interest in the property was under seizure at the time, the failure of the then City

Attorney to make such plea furnishes no basis for estoppel. Indeed, had the then City Attorney been guilty of fault, the public should not be precluded by his error.

Delabigarre vs. Muny. No. 2, 3 An. 236; in Canal Co. vs. City, 44 An. 396, the Court said:

"A similar plea was argued in the manner of *Municipality No. 2 vs. Orleans Cotton Press, 18 La. 272*, and the Supreme Court disposed of it in the following terms:

(P. 272.) "'The defendants urge that their rights "and those of the persons under whom they claim have "frequently been recognized by the Mayor and Aldermen "of the city, and by plaintiff, by putting them in possses "sion of sundry portions of the batture, etc., by charging "them with riparian burdens and duties, and by doing "various other acts and things. These allegations if "proven would have considerable force if the plaintiffs "sued in the right of the municipality, or if they claimed "anything belonging to the corporation; but they only "vindicate the right of the public to *loci publici*, things "out of commerce, and in which the corporation repre-"sented by the plaintiffs can have no property. The "dedication to public use being once established can not "be affected by an act of the municipal officers.

* * * * * *

"In dealing with a similar plea in *Mayor of New Orleans vs. United States, 10 Peters, 734*, the Supreme Court of the United States said:

"But in addition to the consideration that the city "authorities probably acted in ignorance of their rights, it "may be safely assumed that they had not the power, by "the acts referred to, to divest the city of a vested interest "in their common.'

"Nor does the fact that the property in controversy was assessed by the city and taxes collected thereon operate any estoppel. The acts of the municipal officers in

assessing and taxing the property were *ultra vires*, and can not in any way affect the public interest.

"A parish, or rather parochial authorities, are but the representatives within certain territory, and with limited statutory powers of the people within its territorial limits, and while their acts, within the scope of their clearly-defined granted powers, are binding upon their constituents, we can not admit that their malfeasance or misfeasance can divest such constituents of their vested rights of property."

Kline vs. Ascension, 33 An. 566.

A different rule is applied by the Courts to public corporations than that which is applied to individuals, and particularly is this true with respect to such corporations when acting as administrators or trustees of essentially public rights or public property.

In Canal Company vs. City, 44 An. 396, the Supreme Court said:

"Were ordinary litigants and private interests alone "concerned, it would doubtless be too late to obtain re-"lief, but we can not permit the public interests repre-"sented by the City of New Orleans to suffer injury by "such inadvertence of counsel. Precedents justify us in "extending such protection to municipal corporations "with a more liberal allowance than in the case of private "litigants" (1 An. 215; 3 An. 230; 4 An. 180; 7 An. 495).

Respectfully submitted,

SAM'L L. GILMORE,

City Attorney.

WERLEIN *v.* NEW ORLEANS.

ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

No. 189. Argued March 16, 1900. — Decided April 16, 1900.

The city of New Orleans commenced an action in March, 1895, in the Civil District Court for the Parish of Orleans, in Louisiana, to recover from Werlein a tract of land of which he was in possession, having acquired title under the following circumstances: In March, 1876, one Klein commenced an action against the city, to recover principal and interest on certain city bonds, and obtained judgment for the same in 1876. Under a writ of *fieri facias* real estate of the city was seized to satisfy the judgment, and was advertised for sale. The city commenced a suit against Klein to prevent the sale, and obtained an interlocutory injunction. After hearing this injunction was dissolved, and the complaint was dismissed. The property was then sold under the judicial proceeding to a purchaser through whom Werlein claims title. This suit was brought by the city to set aside that sale, on the ground that it was null and void, because the real estate was dedicated to public use long before the alleged sale, and formed part of the public streets of New Orleans; that it was not susceptible to alienation or private ownership or private possession. Judgment was rendered in favor of the city, which was affirmed by the Supreme Court of the State. *Held:*

Statement of the Case.

(1) That this court had jurisdiction to revise that judgment:
(2) That if there were no question of a prior judgment, proof that the land had been properly dedicated for a public square to the public use, and therefore had been withdrawn from commerce, would furnish a defence to the claim by any person of a right to sell the property under an execution upon a judgment against the city:
(3) That as the city did not set up that defence, although it was open to it to do so, in the former action, it could not set it up now:
(4) That although the city holds property of such a nature in trust for the public, that fact does not distinguish it from the character or in which it holds other property, so as to bring the case within the meaning of the rule that a judgment against a man as an administrator does not bind him as an individual:
(5) That the former judgment should have been admitted in evidence upon the trial of this action.

THIS action was commenced in March, 1895, by the city of New Orleans in the Civil District Court for the parish of Orleans in the State of Louisiana, for the purpose of recovering from the defendant below, Philip Werlein, a certain lot of land situated in that city and described in the petition and of which he was in possession. The facts upon which the suit was brought are as follows:

In March, 1876, one John Klein, a citizen of the State of Mississippi, commenced an action against the city of New Orleans in the Circuit Court of the United States in the District of Louisiana, for the recovery of over $89,000 and interest upon certain bonds issued by that city, and fully described in the plaintiff's petition. The city filed an answer denying all and singular the allegations contained in the plaintiff's petition. The case came on for hearing before the court without a jury, a jury being waived, and resulted in a judgment for the plaintiff against the city for the sum of $89,000, with six per cent interest, as stated in the judgment, which was entered on May 2, 1876. The plaintiff, in order to obtain satisfaction, issued a *fieri facias* on the judgment to the marshal, who thereupon seized and took into his possession all the right, title and interest of the city in and to the portion of ground described in the marshal's return to the writ (and being the premises in question) and advertised the property for sale. The city of New Orleans thereupon commenced an action against Klein

in the United States Circuit Court for the Eastern District of Louisiana, to prevent him from selling the property under his judgment.

In its bill of complaint the city alleged the recovery of judgment by Klein against the city, that he had issued a writ of *fieri facias* upon such judgment for the purpose of enforcing satisfaction of the same and had seized under the writ the property already described, which was advertised to be sold on a day named in the bill, and that Klein had no right to issue the writ in that suit, or to cause the seizure, advertisement or sale of the property thereunder, for the reasons and causes stated in the bill, which were, (1) that he had registered the judgment in the office of the administrator of public accounts for the city of New Orleans in accordance with an act of the legislature passed in the year 1870, and, therefore, had no right to issue any writ for the collection of the judgment against the city; (2) because Klein had assigned and transferred all his interest in the judgment before the writ was issued, to certain parties named; (3) that the writ upon which the property had been seized and advertised to be sold had issued for a larger sum than was due on the judgment: the city therefore prayed for an injunction restraining Klein, his attorneys and agents, from proceeding further in the advertisement and sale of the property under the writ; that the seizure of the property by the marshal might be adjudged to be illegal and void, and for general relief.

An order to show cause why an injunction *pendente lite* should not issue was granted, and upon a hearing it was ordered to issue.

The defendant Klein answered the bill, admitted the seizure of the property, and that it was advertised for sale; also, that he had procured his judgment to be registered as alleged in the bill, but denied that he thereby lost or forfeited any other remedy for the enforcement of the judgment, especially that of an ordinary execution; admitted the assignment of his judgment, but alleged that it was only as a security or pledge, and denied that the writ issued for a larger sum than was due, and he therefore asked that the injunction *pendente lite* might be

dissolved, the perpetual injunction denied, and for such further relief as might be proper.

The case came on for hearing on bill and answer, and the court "Ordered, adjudged and decreed that the interlocutory injunction issued be dissolved, an injunction refused, and complainant's bill of complaint dismissed with costs." The judgment was signed June 19, 1878.

After the entry of the judgment dissolving the injunction and dismissing the bill, the marshal took proceedings to sell the property which he had seized, and on August 21, 1878, sold the same to Andrew C. Lewis, the highest bidder, through whom by several mesne conveyances the appellant claims title, and from the time of the above sale he or his grantors have been in possession.

The petition in the present suit, filed by the city, describes the premises in question, and alleges that the defendant, appellant herein, is in possession thereof, and unjustly claims title thereto with the improvements thereon, valued in all at $15,000. The city avers that the defendant is not and never was the owner of the property, and that his only alleged title thereto is derived through mesne conveyances from a sale made by the United States marshal to Andrew C. Lewis, as above stated. The city further alleges that the sale by the marshal to Lewis was absolutely null and void, and that no title or right whatever in or to the property passed by that sale to Lewis or through him to the defendant herein; that the property was dedicated to public use long prior to the date of the marshal's sale, by Bertrand and John Gravier, and that it forms part of the place Gravier, in the Faubourg St. Mary, in the city of New Orleans, and that the property was at the date of the marshal's sale and has ever since been unsusceptible to alienation or private ownership or of private possession, and that the defendant's possession is illegal and in bad faith. The petition further alleges that the city was invested by law with the administration and possession, for the public benefit, of all property in the city dedicated to public use, and that it had the right to sue for the recovery of the possession of and to establish the title and right of use of the public to any such property,

and the petition therefore prayed that the city might have judgment against the defendant, decreeing the property purchased at the sale to be property dedicated to public use, and recognizing plaintiff's right to the possession and administration of the same, and ordering the defendant to deliver to plaintiff possession of the property free from all incumbrances, and for costs.

The defendant answered the bill, and set up therein the recovery of the judgment of Klein against the city, the seizure of the property thereunder, the commencement of suit by the city to enjoin the sale of the property, and the judgment of the court thereon dismissing that bill and dissolving the injunction, and defendant therefore alleged that the right of Klein to proceed and sell the land described in the petition, under his execution, was in and by that judgment recognized, affirmed and established, and such right was therefore *res judicata.*

Other defences were set up denying that the land had in fact ever been dedicated to public use or that it had ever been so used; also alleging that the city had regularly collected taxes upon the property ever since its purchase by Lewis, (more than fifteen years,) and that by reason of the facts the city was estopped from maintaining its action.

Upon these pleadings the parties went to trial, and the plaintiff, after giving evidence tending to prove its case, admitted that the defendant held a regular chain of title from and through Lewis, the purchaser of the land under the sale by the United States marshal, but denied the validity of such title. The defendant offered in evidence an exemplification of the proceedings and judgment in the suit brought to enjoin the sale by the marshal, which offer was made for the purpose of proving the plea of *res judicata.* The plaintiff objected to the evidence on the ground that the cause of action involved in the suit was not identical with the cause of action in the suit on trial, because the sole and only issues decided in the other suit were whether John Klein, having registered his judgment against the city of New Orleans in the office of the comptroller, pursuant to a statute of the State, and having elected that method of collecting his judgment, had not waived his right to pursue any other

method of collection; also whether John Klein was the owner of the judgment, and if so, whether he was estopped by having registered in the office of the comptroller a transfer of the same, and also whether the judgment was not subject to certain credits; whereas the issue involved in this case was whether the property upon which it is alleged the execution was levied and the property sold was legally subject to such seizure and sale; also that the thing demanded in the other suit was not the same thing demanded in this suit, the prayer in the other being for an injunction restraining Klein from selling the property in dispute, whereas the thing demanded in this case was a decree declaring the sale effected by Klein absolutely null and void. The court sustained the objection and refused to admit the evidence, and the defendant duly excepted.

Oral evidence was then given for the purpose of sustaining the other defences set up by the defendant, and the trial having been concluded, the judge made a finding in favor of the complainant, and judgment was thereupon entered decreeing that the property described therein was property dedicated to public use, and that the right of the city to the possession and administration of such property must be recognized, and the defendant was ordered to deliver possession of the property to the city free from all incumbrances.

An appeal was taken from the judgment to the Supreme Court of the State of Louisiana, where it was affirmed, and the defendant below has brought the case here on writ of error.

Mr. Edwin T. Merrick for plaintiff in error.

Mr. R. A. Tichenor for defendant in error. *Mr. Samuel L. Gilmore* filed a brief for same.

Mr. Justice Peckham, after stating the facts, delivered the opinion of the court.

The defendant in error has made a motion to dismiss the writ of error on the ground of want of jurisdiction. We think it must be denied. The sole question in the case is in regard to the validity of the exception to the decision of the trial court

refusing to admit in evidence the judgment recovered in the United States Circuit Court in the action of the city of New Orleans against Klein.

The defendant herein in his answer specially set up such judgment, and claimed that under and by virtue thereof the city was concluded from maintaining its action; the state court refused to give effect to the judgment, and the denial of this right was excepted to by the defendant, and was also assigned as error in the state Supreme Court. In such case we think a Federal question exists. *Pittsburgh, Cincinnati, &c., Railroad* v. *Long Island Trust Company*, 172 U. S. 493, 507, and cases there cited; *Phœnix Insurance Company* v. *Tennessee*, 161 U. S. 174, 184. Whether full faith and credit have been given the judgment of a Federal court by the courts of a State is a Federal question, and that question exists in this case.

Upon the merits we have simply to inquire whether the courts below erred in their decision refusing to admit in evidence the judgment in the chancery suit above mentioned.

The judgment in that suit was between the city as complainant and Klein as defendant, and it had reference to the proceedings of the marshal in the execution of his writ issued upon the judgment of Klein against the city. The defendant in this suit traces his title back to Lewis, who purchased upon the sale under the marshal's writ, and so when the defendant is sued in this action he stands as privy to one of the parties to the chancery suit, and can claim the same rights in the judgment therein as an adjudication, which Lewis or Klein could have claimed if either were in possession of the property, and this suit had been brought against the one in possession.

The law in relation to the effect of a judgment between the same parties is well known, but its proper application to particular cases is sometimes quite difficult to determine. The following authorities treat of the subject very fully and exhaustively: *Cromwell* v. *County of Sac*, 94 U. S. 351; *Davis* v. *Brown*, 94 U. S. 423; *New Orleans* v. *Citizens' Bank*, 167 U. S. 371; *Southern Pacific Railroad* v. *United States*, 168 U. S. 1; *Delabigarre* v. *Second Municipality of New Orleans*, 3 La. Ann. 230; *Slocomb* v. *Lizardi*, 21 La. Ann. 355.

In the first cited case, it was said that a former judgment between the same parties (or their privies) upon the same cause of action as that stated in the second case constitutes an absolute bar to the prosecution of the second action, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose. Where the second action between the same parties is upon a different claim or demand, the judgment in the former action operates as an estoppel only as to those matters in issue or points controverted upon the determination of which the finding or verdict was rendered.

So in *Davis* v. *Brown*, *supra*, Mr. Justice Field, in delivering the opinion of the court, said in speaking of a prior judgment: "The judgment is not only conclusive as to what was actually determined respecting such demand, but as to every matter which might have been brought forward and determined respecting it."

In *New Orleans* v. *Citizens' Bank*, (*supra*, at p. 396,) Mr. Justice White, speaking for the court, said: "The estoppel resulting from the thing adjudged does not depend upon whether there is the same demand in both cases, but exists, even although there be different demands, when the question upon which the recovery of the second demand depends has under identical circumstances and conditions been previously concluded by a judgment between the parties or their privies."

To the same effect is *Southern Pacific Railroad* v. *United States*, *supra*.

The same rule is substantially laid down in the cases above cited from the Louisiana reports.

Now, what was the demand and what was the thing adjudged in the chancery suit between the city of New Orleans and Klein? In that suit the city alleged that Klein had seized under a writ of *fieri facias*, in his action against the city, certain property which was described in the complainant's bill, which he threatened to sell, and which was advertised to be sold on a certain day, and the city alleged "that the said John Klein has no right to issue the said writ of *pluries fieri facias*

in said suit, or to cause the seizure, advertisement and sale of the said property thereunder," and it set forth in its bill the grounds (already stated) for such an allegation.

The sole cause of action was the apprehended and threatened sale of the property, which sale, the complainant alleged, would be illegal. All the other facts set up in the bill were but the grounds justifying and proving, as contended, the allegation that Klein had no right to sell the property, and it was this illegality of the threatened sale that was the sole cause or foundation of the action; it was the matter in dispute and the subject of contest. If the property were not legally subject to seizure and sale, then it would clearly be an illegal sale if consummated, and that fact would be material in proof of the cause of action of the city.

Upon the trial the court adjudged that defendant had the right to sell the property, and it therefore dissolved the injunction and dismissed the bill, and judgment to that effect was duly signed and entered. This would seem to be a full and complete adjudication upon the right of defendant Klein to sell the property seized under his writ. That right would not exist if the property were not the subject of a legal sale. Whether or not it was thus subject was an inquiry which the court would have had jurisdiction to make had it been alleged in that suit.

It is, however, contended that as the city had only set up certain facts as the foundation of its action to prevent the alleged illegal sale of the property, the judgment only bound it as to those facts, and therefore it is now urged that the city in this action was at liberty to prove other facts which would also show that Klein had no right to sell the property, namely, that the property had long before the sale been dedicated to public use, and the city therefore had no right to alienate it, nor had any one the right to sell it upon an execution issued on a judgment against the city.

It is not disputed that if there were no question of a prior judgment in this case, proof that the land had been properly and duly dedicated for a public square to the public use and therefore had been withdrawn from commerce, would furnish a defence to the claim by any person of a right to sell the prop-

erty under an execution upon a judgment against the city. *New Orleans* v. *United States*, 10 Pet. 662, 731, 736; *Police Jury* v. *Foulhouze*, 30 La. Ann. 64; *Police Jury* v. *McCormack*, 32 La. Ann. 624; *Kleine* v. *Parish of Ascension*, 33 La. Ann. 562; *Leonard* v. *City of Brooklyn*, 71 N. Y. 498.

Assuming the law to be as thus stated, the question in this case is, what effect has this judgment under discussion upon the rights of the parties?

The fact now alleged would have furnished in the chancery suit but another ground or reason upon which to base the claim of the city, that Klein had no right to sell the property under his writ. In other words, it would have been additional proof of the cause of action set forth in that suit. The city would have had the right to set that fact up in its bill and to have proved it on the trial, and, if proved, it would have been foundation for a judgment enjoining the sale of the property; but the fact would have been nothing more than evidence of the right of the city to obtain the injunction asked for in the chancery suit, and we think it was the duty of the city to set up in that suit and to prove any and all grounds that it had to support the allegation that Klein had no right to seize or sell the property.

The threatened sale might have been illegal for a number of reasons, based upon widely divergent facts, but whatever those reasons were, the facts upon which they rested were open to proof in the chancery action, and if the city desired the benefit of them, they should have been alleged and proved. It would seem to be quite clear that the plaintiff could not be permitted to prove each independent fact in a separate suit. Suppose the city had only set up the fact of the registry of the judgment as a ground for enjoining the sale, and after a trial on that issue it had been beaten and judgment had gone against it, could the city after that have commenced another suit for the same purpose, and set up as a ground for the alleged illegality of the sale the assignment of the judgment by Klein? In such second action would not the judgment in the prior action conclude the city? If not, then on being beaten on a trial of that issue the city could commence still another action

based on the allegation that the judgment had been paid. Thus, as many different actions as the city might allege grounds for claiming the sale would be illegal could be maintained *seriatim*, and no one judgment would conclude the city except as to the particular ground upon which the city proceeded in each particular case. And yet all these different grounds would simply form evidence upon which the original cause of action was based, namely, the alleged illegality of the apprehended sale. They would form simply separate facts upon which the cause of action might rest. There is no difference in the nature of the ground now urged in this case from the other grounds actually set up in the chancery suit.

It is true that in the chancery suit the thing demanded was an injunction restraining Klein from selling the property, while in this suit it is a decree declaring the sale effected by Klein absolutely null and void. But the two demands, though different in terms, are in substance the same, and are founded upon the same cause of action, viz., the total illegality of the sale, whether threatened or accomplished. The demand in the later action is simply altered to conform to the fact that there had been a sale of the property, while the demand in the former suit was based upon the fact that there had not been a sale, and the relief demanded was an injunction to prevent such sale. In substance and effect the thing demanded is the same in both cases.

It is contended, however, that the ground now urged for the illegality of the sale, namely, a long prior dedication of the property to public use, is of a totally different nature from the grounds which were set up in the chancery suit; that the city there appeared in a different capacity from that in which it now appears, and that it was, therefore, unnecessary to allege or prove this ground in that suit, and that a judgment in the former suit in favor of the right of Klein to sell this property does not conclude the city from proving that he had no such right by reason of the character of the property sold. Although the city has been more than fifteen years in discovering this defence, yet, nevertheless, it is now argued that a judgment against the city in the chancery suit being a judgment against

it in a different capacity from that in which it appears in this action as a trustee for the public, the rule applies in such a case as it sometimes does in the case of a judgment against A B, in relation to property held by him as executor or as trustee, which would be no evidence for or against A B in his individual and personal capacity. *Collins* v. *Hydorn*, 135 N. Y. 320. Although there are exceptions even to that rule. *Morton* v. *Packwood*, 3 La. Ann. 167; *Fouché* v. *Harrison*, 78 Georgia, 359.

We think there is no double capacity in this case, and that the city appears in the same character and capacity in both these suits, and that in this suit it is bound by the judgment in the chancery suit.

The title to land which has been dedicated to public use, as for a highway or public square in a city, is in the city as trustee for the public, and it has been held, in the case of such a dedication of land in a proposed city, to be thereafter built, that the fee will remain in abeyance until the proper grantee or city comes *in esse*, when it will vest in such city. A dedication to the public may exist where there is no city or town or corporate entity to take as grantee, and in such case, while the fee may remain in the individual who dedicates the land, he will be estopped from setting it up as against the public who may be interested in the use of the land according to its dedication. Nevertheless, when a dedication is made in an existing city, the city takes title as trustee. These statements are borne out by the following cases: *Pawlet* v. *Clark*, 9 Cranch, 292; *Beatty* v. *Kurtz*, 2 Pet. 566; *Cincinnati* v. *White's Lessee*, 6 Pet. 431, 435, 436; *Barclay* v. *Howell's Lessee*, 6 Pet. 498; *New Orleans* v. *United States*, 10 Pet. 662; *Police Jury* v. *Foulhouze*, 30 La. Ann. 64.

Although the city holds property of such nature in trust for the public, that fact does not distinguish it from the character or capacity in which the city holds its other property, so as to bring the case within the meaning of the rule that a judgment against a man as an administrator does not bind him as an individual. The city holds all property which it owns, as trustee for the public, although certain classes or kinds of property, such as the public streets, the public squares, the court

house and the jail, cannot be taken on execution against it, for reasons which are plain to be seen. Such property is so necessary for the present and daily use of the city as the representative of the public, as well as for the use of the public itself, that to allow it to be taken on execution against the city would interfere so substantially with the immediate wants and rights of the public whose trustee the city is, and also with the due performance of the duties which are imposed upon the city by virtue of its incorporation, that it ought not to be tolerated. Other property which the city might hold, not being so situated, might be taken on execution against it, but it nevertheless holds that very property, as trustee. It holds it for the purpose of discharging in a general way the duties which it owes to the public, that is, to the inhabitants of the city. The citizens or inhabitants of a city, not the common council or local legislature, constitute the "corporation" of the city. 1 Dillon on Municipal Corporations, 3d ed. sec. 40. The corporation as such has no human wants to be supplied. It cannot eat or drink or wear clothing or live in houses. It must as to all its property be the representative or trustee of somebody or of some aggregation of persons, and it must, therefore, hold its property for the same use, call that use either public or private. It is a use for the benefit of individuals. A municipal corporation is the trustee of the inhabitants of that corporation, and it holds all its property in a general and substantial, although not in a strictly technical, sense in trust for them. They are the people of the State inhabiting that particular subdivision of its territory, a fluctuating class constantly passing out of the scope of the trust by removal and death and as constantly renewed by fresh accretions of population. The property which a municipal corporation holds is for their use and is held for their benefit. Any of the property held by a city does not belong to the mayor, or to any or all of the members of the common council, nor to the common people as individual property. If any of those functionaries should appropriate the property or its avails to his own use, he would be guilty of embezzlement, and if one of the people not clothed with official station should do the like, he would be guilty of larceny. So we see

that whatever property a municipal corporation holds, it holds it in trust for its inhabitants, in other words, for the public, and the only difference in the trust existing in the case of a public highway or a public square, and other cases, is that in the one case the property cannot be taken in execution against the city, while in other cases it may be. The right of the city is less absolute in the one case than in the other, but it owns all the property in the same capacity and character as a corporation, and in trust for the inhabitants thereof. Views similar to these have been heretofore substantially expressed by the late Judge Denio, in speaking for the Court of Appeals of New York in *Darlington* v. *Mayor*, 31 N. Y. 164.

From these considerations we are of opinion that there is no difference in the character of the title by which a municipal corporation holds these two classes of property, but there is simply a difference in the power which such corporation can exercise over its property in the two cases. That difference arises from the peculiar nature of the use of the property, which in the one case requires it to be inalienable and not liable for the debts of the city, while in the other case it is open both to alienation and to sale under execution. In each case the character or capacity in which the city in fact holds the title is the same.

We, therefore, think the former judgment should have been admitted in evidence upon the trial of this action. By that judgment it conclusively appears that this property was legally sold upon the execution on Klein's judgment, and that the purchaser at the sale obtained a title which was good. This title the plaintiff in error now owns, and it must prevail against the claim of the city.

The judgment of the Supreme Court of Louisiana must be reversed, and the cause remanded to that court for further proceedings not inconsistent with the opinion of this court, and it is so ordered.

MR. JUSTICE MCKENNA did not hear the argument, and took no part in the decision of this case.